

Volume 24

Pages 4471 - 4673

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jeffrey S. White, Judge

UNITED STATES OF AMERICA,

Plaintiff,

VS.

NO. CR 11-00573 JSW

WALTER LIEW; ROBERT MAEGERLE;

and USA PERFORMANCE TECHNOLOGY,

INC.,

Defendants.

San Francisco, California

Tuesday, February 25, 2014

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

MELINDA HAAG

United States Attorney

450 Golden Gate Avenue

San Francisco, California 94102

BY: PETE AXELROD

JOHN H. HEMANN

ASSISTANT UNITED STATES ATTORNEYS

U.S. DEPARTMENT OF JUSTICE

600 E Street NW

Washington, D.C. 20044

BY: RICHARD S. SCOTT

ASSISTANT U.S. ATTORNEY

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

Reported by: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Katherine Powell Sullivan, CSR No. 5812, RMR, CRR
Official Reporters

APPEARANCES: (CONTINUED)

For Defendant Walter Liew and USA Performance Technology, Inc.:

KEKER & VAN NEST LLP

633 Battery Street

San Francisco, California 94111

BY: STUART L. GASNER

SIMONA A. AGNOLUCCI

KATHERINE M. LOVETT

CHRISTINA BLAIS

ATTORNEYS AT LAW

For Defendant Robert J. Maegerle:

MCKENNEY & FROELICH

1349 West Peachtree Street

Two Midtown Plaza - Suite 1250

Atlanta, Georgia 30309

BY: JEROME J. FROELICH, JR.

ATTORNEY AT LAW

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Tuesday - February 25, 2014

7:56 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of the presence of the jury:)

THE COURT: Good morning, everybody. Please be seated.

Please call the case.

THE CLERK: Calling Case Number CR-11-573, United States versus Walter Liew, United States versus Robert Maegerle, and United States versus USAPTI.

Counsel, please state your appearances.

MR. HEMANN: Good morning, Your Honor. John Hemann, Pete Axelrod, and Richard Scott for the United States.

THE COURT: Good morning.

MS. LOVETT: Good morning, Your Honor. Katie Lovett, Stuart Gasner, and Simona Agnolucci for USAPTI and Walter Liew who is present.

THE COURT: Good morning, everybody.

MR. FROELICH: Good morning, Your Honor. Jerry Froelich for Mr. Maegerle. Mr. Maegerle is standing next to me.

THE COURT: Good morning. Good morning, Mr. Maegerle. All right. So I understand there's a minor small issue with respect to an exhibit.

MS. LOVETT: Yes, Your Honor. Just briefly.

1 Exhibit 208 was admitted on January 9th, and it was
2 admitted pursuant to a limitation that we remove all
3 handwriting that hadn't been stipulated to. We've done that
4 now, and the exhibit is ready to be admitted in full.

5 **THE COURT:** All right. Is that acceptable?

6 **MR. HEMANN:** That's correct, Your Honor. Thank you.

7 **THE COURT:** All right. So are you offering that now?

8 **MS. LOVETT:** Yes, Your Honor.

9 **THE COURT:** All right. It will be admitted.

10 (Trial Exhibit 208 received in evidence)

11 **THE COURT:** All right. Are we ready to continue?

12 **MR. GASNER:** Yes, Your Honor.

13 **THE COURT:** Let's bring the jury in, please.

14 (Proceedings were heard in the presence of the jury:)

15 **THE COURT:** Please be seated.

16 Good morning, everybody. Welcome back.

17 And we are continuing with closing argument of Mr. Gasner
18 on behalf of Mr. Liew and USAPTI.

19 You may proceed.

20 **MR. GASNER:** Thank you, Your Honor.

21 **CLOSING ARGUMENT (resumed)**

22 **MR. GASNER:** Good morning, ladies and gentlemen.

23 When we left off yesterday, we were talking about the
24 three phases of the time line, and we were almost done. We
25 went through the period of time before the 30K contract. We

1 talked about Condux and the initial interactions with
2 Mr. Marinak, Mr. Maegerle, and other consultants.

3 We went through the 30K time period. And when we left
4 off, we were in the 100K time period that we've got up on the
5 board: 2009, 2010, 2011. And we're almost done.

6 What you've got on the screen now is a list of the people
7 that were working on the 100K project as of June 1, 2010. You
8 met some of them. You heard about many of them. Peter Wong
9 you heard about as the person that was fired and may well have
10 written the anonymous note. Ruth Oduca, a chemical engineer.
11 You didn't hear from her. Philipp Ilagan you did hear. He was
12 a witness in the trial. And others.

13 Now, there was argument about the number and competency of
14 the employees that USAPTI had and whether they could have done
15 the work that they did, and I just want to show you a chart
16 because you didn't see all the witnesses and consultants in
17 this case.

18 And I'm not going to dwell on each and every one of these,
19 but along the first column are the names of all the people that
20 worked either for Performance Group or USAPTI during the many
21 years that this work went forward over a decade.

22 And it starts, it's in alphabetical order: Steve Amerine,
23 you met him, an engineer who was there towards the end of the
24 30K project.

25 Wendell Baker, you heard a little bit about him, an

1 instrument engineer, an outside consultant.

2 Brijesh Bhatnagar, or BJ, you heard testimony about BJ
3 during the trial.

4 Ken Chan you didn't meet. Allen Chang you did meet.

5 But the point of this chart is really to show you the
6 different skills that people had, both employees and
7 consultants, during the course of this long project. And they
8 do have experience as project managers, process engineers,
9 mechanical engineers, instrument engineering, chemical
10 engineering, computer-assisted design, and just generalist
11 engineers, and IT engineering.

12 So Mr. Liew really ran a company in which he had a
13 relatively small number of employees, and many of them were CAD
14 designers or other types of employees who did mostly drafting.
15 The Government has kind of emphasized, "Gee, you know, you
16 don't know anything about TiO₂; do you?"

17 Answer, "Well, you know, no, but my job was, really, to
18 just draw up these elaborate drawings."

19 But there were a lot of other people with deep
20 understanding and knowledge of their disciplines. And you
21 heard from Paul Cooper and others that many aspects of a plant
22 don't require that you know about TiO₂ specifically, and that's
23 not to diminish the importance of Mr. Maegerle. I mean, he had
24 30 years of experience in TiO₂ at DuPont; and the question is:
25 Did Mr. Liew need anybody else besides Mr. Liew [sic] and then

1 a big team in these different disciplines?

2 And I submit to you that this was a good team, a solid
3 team. They had the skills and experience that they needed.

4 Now, keep in mind, too, that Mr. Liew was a prodigious
5 researcher. You heard from Mr. Cooper and others that there
6 was a research library on the server at USAPTI in which they
7 assembled a vast collection of materials as time went by. When
8 we're here in 2010 and they're working on the 100K project,
9 they've been researching the state of the art as it's evolved
10 over a decade and putting that material on the server for
11 people to rely upon and use.

12 Now, did they do their work by looking at patents and
13 going, "Oh, I'm going to do it that way"? No. That's not the
14 way they worked. What happened, the evidence showed, is that
15 there was a long period of early research that Mr. Liew did.
16 You've got that in the notebooks that we talked about
17 yesterday. And there was a continuing process of staying
18 up-to-date on the state of the art. And you saw -- you see
19 that on the screen in front of you as the product of the whole
20 research library that they did.

21 But in the day-to-day work, it was, indeed, sketches from
22 Mr. Maegerle, lots of interactions with engineers at the
23 customer, either Jinzhou or Pangang, as the case may be; and
24 interactions with tons of vendors and consultants.

25 So that's the way the work got done. And the fact that a

1 CAD designer, you know, didn't look at a patent -- I mean, the
2 Government called a lot of low-level employees from USAPTI to
3 ask them, "Well, did you look at patents while you were doing
4 your work?" No, that's not the way the work got done, and it's
5 not really relevant to the issues at hand.

6 By September 2009, there was a basic information submittal
7 to Pangang on the 100K. That's Exhibit 189, big fat process
8 description, lots of other work on the 100K.

9 Exhibit 189 also is this huge binder that if you want to
10 dig into the details of the 100K project and how the design
11 actually turned out, you'll have that in evidence.

12 But a bit of a shortcut, if you will, is to look at
13 Exhibit 239T, which is a translation of a summary that was done
14 by the outside consultants hired by Pangang in China. One was
15 this Australian company TZPI. The other was Zhi Hua, this
16 Hong Kong consultant, that Pangang, this very big company,
17 hired as kind of a second set of eyes to look at the work that
18 USAPTI did and to evaluate it.

19 And what you've got in evidence is the results of their
20 review in September of 2009 of the 100K project, that basic
21 information package. And the conclusions that you'll see are,
22 first of all, that there are things that they liked and things
23 that they didn't like about what Mr. Liew and his team had
24 assembled.

25 On the screen now is an excerpt from page 4, and it talks

1 about a serious error in the balance among petroleum coke,
2 et cetera.

3 If there had been just slavish copying of some stolen
4 DuPont anything, and DuPont is as great as they say it was,
5 there wouldn't be serious errors. Ironically, this is a place
6 in which errors make our point. This was work that these
7 people really did, and it rose or fell in a variety of ways;
8 and the consultants said, "Hey, here's a place where there's a
9 serious error."

10 The Zhi Hua consultants also talk about, in number two:
11 (reading)

12 "The brick-lined area in the chlorinator is
13 insufficient. The top portion of the reactor must be
14 brick-lined."

15 Well, you heard a little bit of testimony about that being
16 a design that USAPTI wanted to do as a different way of doing
17 things. Most people do line the top of the chlorinator. They
18 decided not to. These consultants were critical of that.
19 Again, evidence that these gentlemen were doing a
20 chloride-route process, doing a DuPont type of chloride-route
21 process, doing it their own way; making tweaks, and making
22 engineer's decisions where they thought it was appropriate.

23 Item three on the screen now: (reading)

24 "The diameter of the chlorinator rear cooling flue is
25 too large."

1 This is another area where the Government said, "Oh, you
2 know, the flue pond entrance was copied," and all this kind of
3 stuff; but when consultants looked at it, they were critical of
4 the way USAPTI did it.

5 Engineers are going to disagree about the right ways to do
6 things, and the process of engineering involves a million
7 decisions. People come out different ways, and you can see
8 that in the Cierra/Zhi Hua criticisms of their design.

9 Now, the most interesting thing about this document is
10 item seven, which we have on the screen now; and what it says
11 is, quote: (reading)

12 "Judging by the design of the oxidation oven," this
13 is a part of the plant that has been some focus during the
14 trial, "the design is at the level of mid-1970s technology
15 and not a modern design."

16 So these third parties came in and said exactly what we've
17 been telling you during the trial, which is, this is old
18 Ashtabula technology. Independent consultants came in, looked
19 at the oxidation and the whole thing, did this whole report,
20 and said, "This is really old." And that's exactly what we've
21 been saying, old and in the public domain.

22 The conclusions from TZMI, the Australian company, were
23 very similar. They say: (reading)

24 "This technology originates from DuPont and possesses
25 relatively distinctive characteristics."

1 Let's just pause there.

2 First of all, we don't dispute that this design is very
3 DuPont-like; and what the evidence has shown is that it,
4 indeed, was inspired by the old Ashtabula technology. So
5 there's no argument there.

6 Interesting, though, that this Australian consulting
7 company knows DuPont technology when it sees it. They're an
8 independent consulting firm in Australia; but they can look at
9 these designs and go, "Hey, this is the DuPont method. This is
10 DuPont style, and it possesses relatively distinctive
11 characteristic."

12 There's a whole area of DuPont-like technology that
13 everybody in this industry knows what it looks like when they
14 see it, and TZMI does exactly that. And they conclude the same
15 thing that Zhi Hua did, which is: (reading)

16 "This technology is DuPont's relatively dated
17 production technology...."

18 They say, "Look, it will work. It's really old"; but
19 that's their assessment, and it's exactly what we've been
20 saying.

21 So to sum up on this alleged conspiracy in Count 2, the
22 allegation of the Government that they have to prove beyond a
23 reasonable doubt is that Mr. Liew, Mr. Maegerle, and USAPTI
24 agreed to commit crimes. And what we talked about yesterday,
25 and we'll talk about more today, there was no such agreement.

1 It was a standard consulting arrangement to fulfill a standard
2 commercial contract with some big Chinese companies. What they
3 did was to provide the old DuPont technology that had been
4 disclosed in a score of patents that had been given away,
5 essentially, in terms of confidentiality in the
6 Sherwin-Williams transaction, and that's what they did. There
7 was no agreement to commit crimes.

8 Business contracts, relationships with many consultants,
9 exercise of judgment by those consultants as to what they could
10 and couldn't rely upon. Remember those Zisko e-mails we talked
11 about. There are peripheral mentions of this and that from
12 DuPont that engineers are just going to have in their
13 day-to-day interactions. And, of course, years of hard work.

14 Five terabytes of work, which is what the Government
15 seized, and they had years to go over all this stuff. We
16 talked about in my opening this graphic of a stack of paper
17 that goes up to a satellite. If you printed out everything
18 that they seized in electronic form in terms of a certain
19 number of pages per gigabyte, it would be an enormous stack of
20 paper.

21 And from that, the Government has cherry picked a few
22 documents, scraps of paper, that they've emphasized over and
23 over and over again, and it's really the same scraps of paper.
24 I don't know how many times you can wave around those
25 particular things found in Mr. Liew's closet and in his garage,

1 but the Government certainly made a big to-do about it because
2 in a 24-mile stack of paper, those are the only three that they
3 found they can even make a fuss about.

4 Let's talk about attempt. For conspiracy there has to be
5 an agreement, and we talked about that. For attempt the
6 question is: Attempted to do what? And the Indictment, as
7 expressed in the Court's instructions to you, says here's the
8 what: (reading)

9 "On or about and between 2008 and July 19, 2011...
10 the defendant knowingly attempted to copy," and then
11 there's all these other words, copy, transmit,
12 communicate, blah, blah, blah, "Trade Secret 1."

13 We heard a lot about Trade Secret 1 from the Government,
14 but let's look at what it says. It says: (reading)

15 "The DuPont chloride-route process to manufacture
16 TiO₂."

17 Now, if there's one thing we've heard, it's that companies
18 all over the world have a chloride-route process. It has been
19 around since the Barksdale textbook in 1949. Pieces of it have
20 been around since TiCl₃ was invented in 1919. This is a very
21 old process, but Trade Secret 1 is the DuPont chloride-route
22 process.

23 Well, what does that mean? They have plants all over the
24 world. They're in different locations. They're in different
25 sizes. They're on different sites. Each one of them is a

1 10-million-piece erector set that is custom built for that
2 location. So what is the DuPont chloride-route process?

3 Okay. Pretty vague. Couldn't get much vaguer, or so you
4 would think, until you read the rest of Trade Secret 1:

5 (reading)

6 "Trade Secret 1 includes ways and means in which
7 proprietary and nonproprietary components," that is
8 proprietary things that belong to DuPont; and
9 nonproprietary, that is things that they don't own,
10 they're out in the public, "components compiled and
11 combined by DuPont to form substantial portions of the
12 TiO₂ manufacturing process, and Trade Secrets 2 through 5
13 below."

14 Kind of a mind-boggling array of words. It's the DuPont
15 chloride-route process. There's no attempt made to distinguish
16 that from any other chloride-route process in the world or
17 between and among all of DuPont's different plants, and it
18 includes every conceivable way and mean and unique combination.
19 Well, this boggles the mind.

20 Now, in terms of the crime that's alleged, what the
21 Government has to prove beyond a reasonable doubt is that the
22 defendant reasonably believed that the information the
23 defendant intended to convert was a trade secret. And they've
24 made much of this kind of strange quirk in the law, that for
25 attempt to steal a trade secret, it doesn't need to really be a

1 trade secret. That's the law that you've been instructed on
2 and the focus is, indeed, on reasonable belief; what the
3 defendants thought about the supposed trade secret.

4 Could it be any more clear that they didn't think that the
5 entirety of the DuPont chloride-route process was a trade
6 secret? Think about the belief that Mr. Liew would have had
7 after doing years of research on patents and coming to the
8 conclusion that Mr. Cooper told you about, that the vast
9 majority of this chloride-route process, whether it's DuPont's
10 or anybody else's, is out there and generally known.

11 So if the test is reasonable belief, come on. The
12 reasonable belief was informed by years of research of patents
13 and textbooks and articles that make it clear the entire DuPont
14 chloride-route process is not a trade secret.

15 Maybe there's some combination of some, you know, little
16 thing that they developed in secret that is useful and not
17 readily ascertainable and not generally known, but we never
18 heard about it. And what the allegation of the Indictment is,
19 is it's the entirety plus every conceivable combination. This
20 is, A, meaningless; and, B, not what the defendants believe.

21 So what the Government has done to try to show this, is
22 that they cite from the same document. We're going to talk
23 about the puff letter. But Exhibit 350T, read the whole thing.
24 What the Government keeps doing is taking little snippets from
25 it, cherry picking the parts that they like, and here's the

1 part that they liked yesterday: (reading)

2 "After several years of dedicated research and
3 practice, my company has mastered the technology of the
4 complete DuPont method for titanium white by
5 chlorination."

6 And, so, the Government's argument is, "Well, you know,
7 this is what Mr. Liew was selling to Pangang. It's the
8 complete method; therefore, he was attempting to steal Trade
9 Secret 1."

10 Okay. Not so fast. Because if you read the rest of the
11 letter, what you will see on page 7 of this long -- remember
12 this letter was read, there was a dramatic reading by Agent Ho
13 of all nine pages early in the trial? So you probably don't
14 remember it, but you'll have it in evidence. And it says:
15 (reading)

16 "Given that DuPont has always monopolized that
17 technology and has never transferred that technology to
18 China, the key is to cooperate with a company that has
19 mastery of the technology and can legally resolve
20 intellectual property rights issues...."

21 So if you read the whole letter, what it's saying is,
22 "Yes, we as a company at USAPTI have mastered this technology."
23 And certainly Mr. Maegerle after 30 years had done exactly that
24 and had that skill and knowledge and experience in his mind.
25 Fair statement that they have mastered this because Bob

1 Maegerle is on the team. And Walter Liew has studied the heck
2 out of this also.

3 But the other part of the story that the Government
4 doesn't put into an excerpt is that they're also saying, "Come
5 to us, USAPTI, because we can legally resolve the intellectual
6 property issues." Because they feel as though, based on the
7 due diligence they've done, that their consultants, if they're
8 sufficiently long out of DuPont, can rely on their residual
9 knowledge, can rely on things that they know from their years
10 at DuPont, and can legally do this. You heard from Peter Zisko
11 that Bob Maegerle checked with his lawyer on this.

12 So if you read the whole letter, they're not saying, "Hey,
13 Pangang, we've mastered the technology, and we believe it's
14 stolen and we're going to sell it to you," and they agreed with
15 that. What they're saying is, "We mastered the technology, and
16 DuPont won't transfer it to you."

17 You remember why. Because DuPont wants to build its own
18 plant in Dongying and make all the money itself. It wants to
19 be the sole investor. So DuPont has a monopoly on the
20 technology, they believe in their mind, and they don't -- they
21 want to keep that to themselves. "If you want a DuPont-like
22 plant, you've got to buy it from DuPont, and we're going to
23 build it for you and we're going to make all the money."

24 And what Mr. Liew is saying is, "There's another way.
25 Come to a company that has experienced people, that have

1 themselves mastered this technology and can resolve the
2 intellectual property issues legally," and that's the
3 arrangement. So if you read the whole of the puff letter on
4 this issue, it's a very different picture.

5 So let's talk about this. What is this object of the
6 attempt? And it's also -- by the way, the object of the
7 conspiracy is also to steal Trade Secret 1. So all these
8 arguments apply. I mean, the conspiracy is gone, in our view,
9 because there was no agreement to do anything illegal; but it's
10 also gone because the object of any agreement that occurred was
11 not to steal Trade Secret 1, but to build or design a plant
12 using legitimate means.

13 So let's focus, again, on this concept of a DuPont
14 chloride-route process. There is the chloride-route process.
15 You heard about that. It's basically the same in every plant.
16 It's in Barksdale, it's in the literature, and everybody agrees
17 there is a chemical process for taking $TiCl$ and oxidizing it
18 into white powder; and this has been around forever. It is the
19 chloride-route process.

20 And you saw lists of plants on some of the slides that are
21 in evidence from Tronox. Remember I talked to the Government's
22 expert Gibney? He worked at Tronox. There was one slide that
23 described all the plants in the world. They all have
24 chloride-route processes and all of them operate in, basically,
25 the same way. So that's just the chloride-route process.

1 What there also is, number two on the screen, is the
2 generally known DuPont chloride-route process. This is what's
3 been revealed in 60 years of patent disclosures. Remember,
4 they started getting patents in the 1940s on what they do and
5 what they presented to the world.

6 And the deal in patents, you heard about this when I
7 talked to Mr. Dayton, is that you can get a patent if it's
8 novel and you are willing to disclose how to do it; and in
9 exchange for that disclosure, the patent rules and laws allow
10 you to get a monopoly for a period of time. It used to be 17
11 years. It's now 20. But that's the deal: Disclose to the
12 world how you do it, and in exchange you get a limited
13 monopoly.

14 Well, all those patents expired; and as the world moved
15 forward, more of them expired, and more and more of this came
16 into general knowledge known by the public, known by the world.
17 That's the patent deal, and that's why patents are relevant to
18 this case.

19 We know this is a case about -- it's a criminal case about
20 trade secrets, fair enough; but the important part is that
21 there is a body of knowledge that is generally known over a
22 period of years. And you heard from Mr. Cooper about it. You
23 heard about it in other places as well. Gibney discussed it.
24 And it's what TZPI is talking about in their consultant report
25 when they recognized DuPont similarities in the USAPTI work.

1 I mean, how would they know what a DuPont plant looked
2 like? The reason they know it is because there are decades of
3 patent disclosures that DuPont did. In order to get its little
4 patent monopoly, it had to disclose many, many aspects of how
5 DuPont does things.

6 Now, there's a third thing, which is the highly specific
7 details of what DuPont actually does in any one of its plants,
8 and that is embodied in part in Trade Secrets 2 and 4, the two
9 big pieces of paper that the Government likes to wave around.

10 But those are different, and we need to -- what the
11 Government constantly does is, they take snippets of documents
12 that are really talking about two, the generally known DuPont
13 process, and they try to confuse you by saying, "Well,
14 that's" -- actually, what they're talking about is three,
15 highly specific details of what DuPont does.

16 And I submit to you that what the defendants were
17 attempting to do was a perfectly legal and legitimate business
18 to do number two, the generally known DuPont process.

19 Now, you've still got to work out the details. You've got
20 to put together the 10-million-part erector set. There's a ton
21 of work to be done to accomplish it; but if you're looking at
22 what's the object of the conspiracy, what is the attempt, what
23 were they attempting to do, they're attempting to do the
24 generally known DuPont process based on old school
25 Ashtabula-disclosed technology, and there's been a lot of

1 confusion over that.

2 Because if you think about it, what on earth could the
3 DuPont number three, the highly specific details -- you saw in
4 the Ti-Cons brochure that Mr. Cooper talked about, a typical
5 plant has 235 static equipments, 129 rotating equipments,
6 22 kilometers of pipes, a thousand isometric drawings, 41,000
7 piping objects. These are incredibly complicated projects that
8 cost hundreds of millions of dollars to build; and, so, the
9 idea that there is the specific DuPont chloride-route process,
10 how on earth -- including all the combinations and compilations
11 and subparts that make up a -- I mean, Trade Secret 1 is
12 impossible to get your mind around.

13 It reminds me of Lucy, Charlie Brown, and the football. I
14 put up on the screen one of many *Peanuts* cartoons you've
15 probably seen over the years. Lucy tries to get Charlie Brown
16 to kick the football; and as soon as he's about to kick it, she
17 swoops the football away, and Charlie Brown screams and falls
18 on his head. And the cartoon is usually Lucy trying, once
19 again, to get Charlie Brown to do it and then she swoops it
20 away.

21 Well, that's what our efforts to get some particularity on
22 Trade Secret 1 have been like. Because whenever we say, "Hey,
23 every plant has a chlorinator," "Oh," swoop, "but not our kind
24 of chlorinator."

25 And we say, "Well, what's your kind of chlorinator?"

1 "Well, we're not going to say."

2 Because if they kept the football in place, Paul Cooper
3 would kick it 50 some yards down the field because his opinion,
4 as you heard, is that these vague kinds of things are simply
5 not trade secrets, that they really are generally known in the
6 industry, readily ascertainable, and they don't derive value by
7 virtue of their secrecy.

8 But every time we try to pin down -- because part of what
9 we wanted to do was to say, "Let us -- tell us what the secret
10 supposedly is in more detail; and we're going to show you that
11 in all these years of work, USAPTI did something different."
12 And the football kept moving around.

13 You know, when you say, "Jeez, look at this particular
14 chlorinator design, and we want to say our chlorinator is
15 different," they go, "Oop, I never looked at the chlorinator."
16 I mean, Dayton never looked at any of the USAPTI stuff. Gibney
17 never looked at any of it. And what they kept saying was this
18 confusing mantra, which is, "DuPont has a unique compilation of
19 stuff."

20 Okay. Well, maybe they do. Maybe each one of their
21 10-million-part erector sets is unique in its own way, but they
22 never said what they do. There wasn't a word about that or how
23 it compares to what USAPTI did. The only witness that had
24 looked at what's in the art, in the publicly available
25 materials, and looked at USAPTI's material, was Paul Cooper.

1 And every time we tried to get specificity, swoop, the football
2 gets taken away.

3 It reminds me of another piece of popular culture from the
4 *Wizard of Oz*. So you know this scene. What's up on the screen
5 now is Mighty Oz. And there's the scene where Dorothy and her
6 compatriots finally get to see the Wizard and they go into this
7 huge chamber, and there's bursts of flame, and Mighty Oz has a
8 booming voice. And what they eventually find out is, no, this
9 is all smoke and mirrors, that there is the little guy behind a
10 screen that is creating the illusion of power.

11 Now, the illusion of power is useful. It is useful for
12 DuPont for them to claim that they have this vast unique
13 treasure trove of trade secrets and what they do, but you heard
14 that that is not true. Gave away the Ashtabula technology to
15 Sherwin-Williams. Not reasonable measures to maintain
16 confidentiality. After 15 years, all of Ashtabula, was readily
17 available for any owner of that plant to simply publish or do
18 what they wanted to; put in other plants around the world, get
19 their own patents, do whatever they wanted.

20 But DuPont makes no efforts to say, "Oh, we have this vast
21 unique Trade Secret 1. Our entire process," they claim, like
22 Oz, "is a trade secret, including every compilation and
23 combination thereof."

24 Okay. Well, what Oz isn't telling you, is that in the
25 Sherwin-Williams deal, the Antioch technology was disclaimed,

1 and that they can't claim that they are the trade secret owner
2 of anything that was at Antioch because they didn't take
3 reasonable measures to protect the Antioch slash Ashtabula
4 technology.

5 It is not reasonable to simply give to your competitor a
6 vast chunk of your technology with no obligation to maintain it
7 confidential after 15 years; and then later to claim, "Yes, we
8 have maintained confidentiality over everything."

9 You remember the last witness that came in,
10 Mr. Livingston, and he said, "Oh, well, Millennium, the later
11 owners of Ashtabula, well, we've kept it confidential."

12 And I asked him, "You know, well, what about before you
13 got there in the year 2000? You know, what happened when SCM
14 owned this plant? What happened when it was Millennium?
15 You're at Cristal now, and you've slammed the barndoor shut and
16 have all kinds of procedures." But this is classic closing the
17 barndoor after the horse is gone.

18 They put on a big show. It's an Oz-like show with flames
19 and policies, you know, that are a foot thick, but it is not an
20 accurate reflection of what really is a trade secret. They
21 claim it.

22 You know, there's some harm in claiming. You can say
23 there's no harm in trying, but you heard from Mr. Livingston.
24 He's moved jobs, and his prior employer, Tronox, then sued him
25 under an inevitable disclosure, "Our trade secrets you will

1 inevitably disclose in your next job." And he thought that was
2 not right, and he fought it and he ended up resolving it.

3 But this is what big companies do. It's a lot like Oz.
4 It gives them power. It's power and ambiguity. It's power in
5 just saying, "You know, everything we do is a trade secret.
6 Everything we stamp is confidential."

7 But, you know, it doesn't really get narrowed. You don't
8 see what's behind the screen and whether it's a little guy with
9 no power, or it really is the Almighty Oz, until it gets
10 litigated. That's what happens.

11 I mean, all these companies try. They do employment
12 agreements that say, "Everything you learn while you're here is
13 a deep, dark secret and don't you, you know, reveal anything."
14 I mean, that's a way to try and get power over people, but that
15 little piece of paper doesn't make it a trade secret if they
16 gave it away at Ashtabula, if they gave it away in patents.
17 It's an Oz illusion that has its power, but it is not true and
18 it's smoke and mirrors.

19 So Trade Secret 1, take a look at it. It is impossible to
20 decipher. It is a proclamation of Oz that everything they do
21 is a trade secret, and that's not true.

22 Now, you heard an attack on Paul Cooper. And what I told
23 you yesterday is the reason the Government is attacking him is
24 because he's just that important.

25 And it's really up to you to assess credibility of

1 witnesses, all the witnesses in the case. And the Court's
2 given you an instruction, it's up on the screen now, on
3 credibility of witnesses: Ability to know the things testified
4 to, memory, manner while testifying.

5 And these are, too, of interest in evaluating all the
6 DuPont witnesses that came before you, and there were a lot of
7 them, which is, what is their interest in the outcome of the
8 case, what is their bias or prejudice, items four and five.

9 All of these DuPont witnesses that came in had been at
10 DuPont their entire career. DuPont has a pending civil case
11 for damages against Mr. Liew. You will hear about that in
12 connection with the obstruction allegations. But they have a
13 lawsuit seeking money. Could they have more of an interest in
14 this case? They wanted the Dongying project in China.
15 Mr. Liew got it instead of them with Pangang. Could they have
16 more bias?

17 And if you look at Mr. Dayton, you look at Dr. Diemer,
18 they have spent their whole careers in a DuPont-centric world,
19 and they're biased in favor of DuPont. So, of course, they're
20 going to say, "Yes, everything we do is secret and important
21 and valuable"; but you have to look at their credibility and
22 compare it to what Paul Cooper told you.

23 And it's not about number of witnesses. The weight of the
24 evidence, this is another one of the Court's instructions:

25 (reading)

1 "The weight of the evidence as to a fact does not
2 necessarily depend on the number of witnesses who testify.
3 What is important is how believable the witnesses were,
4 and how much weight you think their testimony deserves."

5 So, yes, a lot of DuPont witnesses came in here and said
6 things that were favorable to DuPont; but you can look at their
7 bias, and you can -- you can't just count them up.

8 The fact that a lot of DuPont witnesses came in here tells
9 you that DuPont is very much involved in this case. It doesn't
10 tell you that because they sent a lot of people that they're
11 right. And what matters is how believable you find the
12 witnesses to be.

13 Your memory will control. Paul Cooper was on that stand
14 for a day and a half, and your memory will control as to how he
15 held up on cross-examination and whether any real effect on his
16 credibility was there.

17 And I submit to you, if you think back, that was a man who
18 took that stand, took an oath, and was firm in his opinions;
19 and not because he had been paid an hourly wage, which, by the
20 way, is less than what Gibney was paid. So if you want to look
21 at, jeez, it's a lot of money that he got, the suggestion that
22 his opinion was different because of how much money he made is
23 for you to decide; and I submit to you it has nothing to do
24 with what Paul Cooper had to say.

25 And if you compare him to Gibney, look at the judge's

1 credibility instructions on other things. Ability to know is
2 one of the things you're entitled to look at in assessing
3 credibility. And when Paul Cooper tells you there's no trade
4 secrets here, what ability does he have to know that?

5 Forty-four years working in titanium dioxide plants, designing
6 process flow diagrams, piping instrumentation diagrams, piping
7 specifications.

8 He did that work, different shifts, graveyard shifts early
9 in his career, rising through the ranks at SCM and Millennium
10 to positions where he was in a position of importance in those
11 big corporations.

12 And compare -- he's a chemical engineer by trade. Compare
13 his ability to talk to you and share useful information with
14 you about what is and isn't a trade secret to that of
15 Mr. Gibney, the Government's expert.

16 Yes, he was paid less money, but that's because he didn't
17 spend much time on this case. He didn't look at any of the
18 USAPTI records. He didn't study what's in the public record,
19 and he's not an engineer. He was a salesman. He was in
20 marketing; and then later in his career he got into
21 restructuring, financial restructuring, which basically means
22 laying off lots of people, and he did that.

23 And, yes, he had some experience in plants when he was
24 restructuring them; and he told you, I think, that there was
25 somebody that quit and he had to take over some plant in

1 Germany, which he never went to.

2 Compare their ability to know anything about what's truly
3 a trade secret in all of this, and Paul Cooper comes way out on
4 top.

5 So let's talk a little bit about some of the miscellaneous
6 stuff that the Government has thrown out in this trade secret
7 area. One is a conversation with Tim Spitler, and it's a note
8 in Mr. Liew's handwriting. We've got it up on the screen now,
9 Exhibit 199. And it says: (reading)

10 "Even with best technology with stolen prints,"
11 exclamation point, "but without the startup people and
12 maintenance experience people, the plant won't be
13 successful."

14 So the Government holds up this scrap of paper and focuses
15 on "stolen," the words "stolen prints," and they act as though
16 that proves something; and they act as though it proves, "Ah
17 ha, this is a giant conspiracy to steal things."

18 But look at the context here. What they are talking about
19 is the need for maintenance people. It's exactly the opposite
20 of what the Government is saying.

21 The import of this note is Spitler is telling him that
22 prints don't matter; that what you need is experienced people.
23 The plant isn't going to work with prints.

24 And look at the way he says it -- or Mr. Liew writes down
25 what Spitler says, "even with best technology with stolen

1 prints." Usually when you say "even with," you're making a
2 hypothetical point. If you're talking to somebody, say a
3 contractor that's going to do a renovation in your home, and
4 you lay out, "I want this. I want that, blah, blah, blah," the
5 contractor turns to you and says, "Even with all the time in
6 the world, Mr. Gasner, I couldn't do what you're asking me to
7 do." And what that means is, and we all know, we don't have
8 all the time in the world. It is a way of saying what you
9 don't have.

10 And what Spitler is telling him, I submit to you, in this
11 is, "Even with stolen prints," paren, "which we don't have,"
12 comma, "you need maintenance people."

13 I mean, his point is twofold. One is, prints don't
14 matter. You could get all the prints in the world, and that
15 gets you nowhere.

16 I mean, these things that the Government waves around, as
17 Mr. Cooper told you, are worthless. This is not an area of
18 technology in which you can get a print and do anything with
19 it. And that's what he's saying; and the fact that he uses the
20 word "stolen," by the way, Mr. Liew puts an exclamation point
21 because his ears kind of perk up when Spitler uses the word
22 "stolen." He goes, kind of, "What," exclamation point. This
23 note doesn't get you where the Government says it does.

24 How about these photos? This is another thing that the
25 Government has dwelled upon. Oh, here's an e-mail where

1 Maegerle sends photos, and they're from some DuPont plant, and
2 they made much of the fact that the elbows in the flue pond
3 from this photo look like the elbows in the flue pond designed
4 by USAPTI.

5 Well, first of all, you can see the whole flue pond from
6 Google Earth. Everybody admits that if you can see it from
7 Google Earth, it's not a trade secret. So what really can you
8 see in this picture that's at all valuable? Maybe those little
9 flanges, the little square things around it. Well, Paul Cooper
10 showed you an article that was all about designing elbows for
11 abrasive hot gas. I mean, there are so many subcultures of
12 engineering out there, it's kind of amazing. There are
13 articles written about how to design an elbow for hot abrasive
14 gases. I mean, this is what engineers do. And, you know, so
15 what do you get out of this picture?

16 Here's another photo. They called I think it was Allen
17 Chang to say, "Yes, Mr. Liew gave me this photo and I used it."
18 What did he use it for? He used it to measure how wide a
19 concrete wall was. Okay. Totally visible from Google Earth,
20 and this is just, you know, to make a concrete wall that has
21 water in it, and they call Allen Chang.

22 When we got up to the witness count, I hadn't counted them
23 up, but it's 33, they were brought in and most of what they
24 said was good for us, I think, if you look back on it, much of
25 what I talked about in this case. You know, from Zisko and

1 Marinak and all these people said nice things about Walter Liew
2 and his mentorship.

3 I mean, yes, we only had a few witnesses to call at the
4 end of the case because the Government called them all. That
5 doesn't mean they were good for them. If you look back, I
6 think you're going to find they supported exactly what I've
7 been telling you here in closing argument.

8 So photos, all right, big deal. By the way, if you look
9 at all the photos, here's one. It shows an enormous body of
10 water and a barge behind there. Now, you know if you can see
11 the barge from the picture, the barge can see you; and any boat
12 going by here would see everything that's depicted. So between
13 Google Earth and things that you can see from a public
14 waterway, I mean, really, are these trade secrets?

15 Look at this one. You know, totally same kind of stuff
16 you can see on Google Earth, but the Government wants to pluff
17 up its case with a lot of witnesses and a lot of pieces of
18 paper that they say show something; but when you look at them,
19 they're little carts, they're little scraps of paper which they
20 have carefully arranged into a house of cards. That game that
21 kids play where you try to carefully arrange the cards and see
22 how high you can get them.

23 Well, this is what the Government's done, and they'll take
24 one photo out of 17 and go, "Well, you can't exactly see this
25 elbow from the sky, so it's valuable."

1 And then they call a witness who says, "Have you ever
2 published a picture of this particular elbow?" Answer, "No."
3 "Ah ha. Gotcha." And this is the way their case has
4 proceeded.

5 Another point that they keep making is this employment
6 agreement, the thing that Mr. Maegerle signed, you know, in
7 1957 that DuPont provided, pulled out of some old dusty file.

8 The fact that DuPont has an overbroad, very broad
9 employment thing that they make people sign on their first day
10 of work doesn't make anything a trade secret.

11 And lots of evidence. Mr. Liew has a similarly broad
12 thing. This is standard practice. First day of work, people
13 sign broad things. It's feeding, and they can't, for every
14 employee, define all the trade secrets that exist today and
15 next week and the week after because things are coming into the
16 public and new trade secrets may emerge. So they do the
17 expedient thing and they go, "Okay. You agree not to disclose
18 anything secret."

19 But Paul Cooper's own employment agreement with SCM, you
20 saw that, Exhibit 943, it's very broad. But the standard
21 practice in the industry is those agreements don't mean you are
22 a slave to your prior employer. They don't mean you can't go
23 out and get a job. They don't mean that you need a lobotomy.
24 They don't mean that you can't think about what you did in your
25 last job or might say to a colleague or put in an e-mail as

1 something you remember.

2 So let's talk about economic espionage. And as I
3 mentioned to you, it is a case that -- a claim that includes
4 the trade secret conspiracy because everything we talked about
5 up until now, if you find that the Government hasn't proved its
6 case beyond a reasonable doubt as to the trade secret
7 conspiracy, the economic espionage case goes away also. So you
8 don't even need to get to it on the jury form if you find that
9 there was no trade secret conspiracy, practically speaking.

10 Now, there's a difference in that it's different parties.
11 Trade secret conspiracy in Count 2 is Mr. Maegerle and
12 Mr. Liew. Count 1, which is the economic espionage conspiracy,
13 are these four Pangang companies and Mr. Liew and USAPTI; but
14 if you find that the object of all this was not to steal
15 anything but an appropriate business deal to do a permissible
16 act, then that's another reason why economic espionage has not
17 been proven.

18 The key additional element for espionage, what makes it
19 espionage in the title of the statute is an intent to benefit
20 the Government of the People's Republic of China or a foreign
21 instrumentality.

22 Now, the Government of the People's Republic of China is
23 the Communist Party. So what you would need to find beyond a
24 reasonable doubt is that Mr. Liew's intention in doing all this
25 over this 13 years was to benefit the Communist Party in China,

1 and the Government's only evidence of that is this puff letter.
2 We're going to talk about that at length next.

3 But the other way that they can -- that the statute works
4 is an intent to benefit one of these four companies, and I'm
5 going to talk about that afterwards.

6 So, first of all, let's clear out the idea that doing
7 business with China is any part of this; that doing business
8 there, it's what DuPont does.

9 If you look at Exhibit 279, you'll see that Richard
10 Olson -- you met Mr. Olson. He came in here and talked about
11 his attempts to get that plant built at Dongying. And you'll
12 see here that there's a Chinese Government Affairs Department
13 at DuPont. They have all kinds of Chinese people working their
14 government affairs, dealing with the government of China, the
15 Communist Party. A lot of the people that are alleged to be,
16 you know, these deep, dark Communists that Mr. Liew dealt with,
17 Mr. Olson dealt with, too, because you've got to go, for
18 example, to the State Council to get approval for anything in
19 China.

20 So just doing business with China or talking with
21 officials who happen to be members of the Communist Party tells
22 you nothing about intention because to do business there at
23 all, you have to have these interactions.

24 Stacks of business cards tell you absolutely nothing.
25 Everybody's got them, and they don't tell you much.

1 Now, you heard why DuPont didn't get the deal, and
2 elsewhere in 279 it had to do with this deep-welling practice
3 of ferric chloride, which this exhibit tells you has always
4 been controversial. China didn't like pumping toxic waste deep
5 into the ground. DuPont defends that.

6 Mr. Olson said nothing wrong with it. He didn't, you
7 know, bat an eyelash when we were talking about Antioch. In
8 fact, they had to tear up roads there when the Cierra Creek
9 product, which is another attempt to put this waste in the
10 ground, didn't work. He said, "No, you know, it didn't work;
11 but, you know, that was just a little project."

12 So DuPont has its beliefs about what's appropriate,
13 environmentally and otherwise, and China disagreed.

14 And DuPont has always insisted on a policy of being the
15 sole investor. They wanted to make all the money from this
16 project. Not acceptable to China. So they didn't get it, but
17 there's nothing wrong with dealing with China and dealing with
18 the Government to the extent that you need to. That tells you
19 nothing.

20 So let's look at what the Government focuses on almost
21 exclusively. We call it the puff letter because, I submit to
22 you, it is obviously a marketing letter with a lot of
23 exaggeration and puffery in it.

24 Mr. Liew's a little guy. He's a small businessman trying
25 to compete with DuPont in China. He has not had success. He's

1 gotten the Chengde contract that wasn't funded. He got the
2 Jiangsu micronizer contract, that was okay; but he's not
3 getting the traction he needs.

4 He's talking to his friend Changhe Liu, the author of that
5 book, who's giving him input. We heard evidence that Changhe
6 Liu was kind of telling him how to go about doing things, and
7 this is a letter that is an attempt by a small businessman to
8 get a big contract; and, yes, he exaggerates.

9 Here's the e-mail from Changhe Liu, Exhibit 1057, and he
10 says: (reading)

11 "The letter has been revised but may not be suitable.

12 Please review and make a final decision yourself."

13 So it's obvious this letter is a bit of a committee
14 effort, and there's no evidence it was ever sent. It has no
15 signature on it. It is a file on a computer, and Agent Ho
16 admitted that they have no direct evidence that this letter was
17 ever sent.

18 And what they claim to be circumstantial evidence doesn't
19 get you very far. I mean, the draft mentions people that
20 Mr. Liew knows or has had some relationship with in the past,
21 but that doesn't tell you that the decision he made was to send
22 the letter.

23 It's kind of like going to a career counselor who tells
24 you how to write a résumé, and some of the advice you get is
25 terrible: You know, get your résumé, you know, at the top of

1 the stack. If you say this, that, and the other thing, you'll
2 get noticed. And some of that advice is really bad, and you
3 have to make up your own mind about whether you're going to
4 send it or not, whether you're going to follow the advice of
5 these advisers or not. And there's no evidence as to whether
6 Mr. Liew decided to send this letter or not.

7 But the Government wants to look at it and say, "Yeah, but
8 it is a map of what was on his mind that shows that he engaged
9 in economic espionage."

10 And the Government takes it all as literally true, or at
11 least the parts they like. Mr. Axelrod started his closing
12 argument setting the scene in 1991. Walter Liew attended a
13 banquet with Luo Gan, this high-up guy in the Communist Party,
14 as if he was reciting events that actually happened. Well,
15 that's because it's a part of the letter that the Government
16 likes for its theory.

17 And he goes on to talk in this banquet paragraph, you've
18 got it up on your screen now, Exhibit 350T: (reading)

19 "The purpose of the banquet is to thank me for being
20 a patriotic overseas Chinese who has made contributions to
21 China, and has provided key technologies with national
22 defense applications in paint/coating and microwave
23 communications."

24 The Government wants you to believe that that sentence is
25 true and that this one reference to being a patriotic overseas

1 Chinese tells you all you need to know about Mr. Liew's
2 intentions and that he is, therefore, guilty of economic
3 espionage.

4 Well, take a look at this letter of achievements that is
5 being -- you know, paint/coatings and microwave technologies
6 and all this, Exhibit 351T. The Government flashed this on the
7 screen yesterday. It's a list of nine projects. One of them
8 is the acrylic resin project that we saw evidence about. We
9 heard from Mr. Marinak, and there are documents in evidence
10 about the acrylic resin project.

11 The rest of these there is no evidence that they ever
12 happened: Microwave technologies, radar, this, that, and the
13 other, paints and coatings and, blah, blah, blah. There's nine
14 different projects on here. The Government seized every scrap
15 of evidence from home and office from Mr. Liew, 5 terabytes
16 worth of stuff. From Pangang also. They had years to go over
17 it.

18 There was not a single piece of evidence introduced in
19 this trial to suggest that any of these projects ever happened.
20 One of them did, the acrylic resin thing. The other eight
21 there wasn't a scrap of evidence, and the Government admitted
22 they have no evidence that these things ever happened.

23 This was one grain of truth, acrylic resin project, some
24 experience, and then a lot of puffery and exaggeration around
25 it. These projects never happened.

1 And Mr. Liew goes on to say: (reading)

2 "Our cadre of titanium white experts... has abundant
3 actual experience in every area of expertise."

4 This is a badly written letter trying to get a job. It is
5 not a true intention of what the man actually did or that there
6 was a banquet held to honor him as a patriot. This is just
7 exaggeration.

8 Now, the Government wants you to -- and, likewise, let's
9 just look at this next thing: (reading)

10 "At that time Secretary General Luo Gan gave
11 directives so that I would better understand China and
12 continue to make contributions to her. The following day,
13 I was given a list of key task projects by the appropriate
14 Chinese agency."

15 Okay. This is in the puff letter. The Government acts as
16 though it's literally true, that this top Communist official
17 personally gave Walter Liew directives on what to do, his
18 marching orders, if you will, from the top of the Communist
19 Party. That's the way they want you to believe that this
20 letter was written and what it means.

21 But look at what the evidence shows. There was no list
22 found in evidence after the Government swooped in and seized
23 everything. What they did find was a printout from the
24 Internet of major technology projects scheduled for 1993 to
25 2000, Exhibit 387.

1 So you get a list of projects that the Government is
2 interested in. You could go on any Web site for the United
3 States Government, find a bunch of things, affordable housing,
4 clean energy, you know, priorities of the U.S. Government,
5 projects that we'd like to do. You could get it off the
6 Internet, you could print it out, and then you could tell
7 people, "You know, I am aware of the top priorities of the U.S.
8 government."

9 But it would be meaningless, and that's what the evidence
10 shows, is a printout from the Internet. It doesn't show
11 anything from Luo Gan. And, so, the parts of the letter that
12 the Government likes are obviously exaggerations and puffery by
13 a small businessman trying to get a job.

14 **THE COURT:** Mr. Gasner, let's take a stretch break,
15 okay? Is that all right?

16 **MR. GASNER:** Absolutely. Of course, Your Honor.

17 **THE COURT:** Okay. Thank you.

18 (Pause in proceedings.)

19 **THE COURT:** Please be seated.

20 **MR. GASNER:** May I proceed, Your Honor?

21 **THE COURT:** Yes, please.

22 **MR. GASNER:** Now, if the Government wanted to accept
23 the entirety of the puff letter as true, it would lead to a
24 conclusion of innocence.

25 Look at this other part of the puff letter, Exhibit 350T,

1 this time at page 7, because what Mr. Liew says, is that given
2 that DuPont has always monopolized that technology, the key is
3 to cooperate with a company that has mastery of the technology
4 and can legally resolve intellectual property rights issues.
5 We talked about this earlier. It's in that same letter.

6 So if we're going to say that the letter is an accurate
7 reflection of Mr. Liew's state of mind, you've got to take the
8 bitter with the sweet and accept that his state of mind was to
9 do something legal, which completely destroys the Government's
10 case.

11 But that doesn't work for them, of course. They are
12 building a case. They are assembling snippets from here and
13 there and putting them into an arrangement that they like; a
14 house of cards, if you will. So it doesn't serve them to have
15 you read the entire letter.

16 Here's more cherry picking, Exhibit 369. The part that
17 the Government likes is, they say: (reading)

18 "... during liaison with the consulting companies,
19 they have clearly indicated that the source of the
20 technology is the DuPont Company in the U.S.A."

21 And they treat that as, well, it's a big admission. Well,
22 that's part of our defense, is that these men designed a plant
23 modeled on old DuPont, publicly available technology.

24 But if you look elsewhere in this letter, if you read the
25 whole thing -- this is a good one to read the whole thing.

1 It's from Pangang. It's their assessment of intellectual
2 property risks. This is a big company with a focus on: Are we
3 engaged in improper conduct? What are the intellectual
4 property risks?

5 And in this section, they're dealing with patent
6 infringement; and what they say is that most of the core
7 patents have expired and that there may be some new patents
8 coming out, but those aren't going to be of interest, and that
9 they are happy to do the old technology.

10 And they note, and you'll see it here, "The protection for
11 the core technology has expired." So in looking at patents,
12 they've said, "The core technology has expired. All of this is
13 in the public domain. We're not going to get sued for patent
14 infringement."

15 Then they talk about trade secrets, another section, a
16 different form of intellectual property. And this long excerpt
17 talks about DuPont stipulating that: (reading)

18 "Technical staff of DuPont cannot, within five years
19 of leaving employment with DuPont, do similar work for any
20 of DuPont's competitors. As regards whether it is
21 permissible to do similar work after five years, the
22 experts hired by the consulting companies have made
23 inquiries with the appropriate department at DuPont, and
24 its response is" --

25 **THE COURT:** Could you slow down just a little bit,

1 please?

2 **MR. GASNER:** Certainly, Your Honor.

3 **THE COURT:** Thank you very much.

4 **MR. GASNER:** (reading)

5 -- "its response is can do similar work, but cannot
6 use official DuPont material, which does not include
7 the information assimilated by the experts
8 themselves."

9 And then they go on to say that: (reading)

10 "The technical experts are not going to contradict
11 DuPont's trade secret protection."

12 So if you read the whole document, what it basically says
13 is, they gave thoughtful consideration to intellectual property
14 risk. They focused on what we talked about yesterday, what
15 Mr. Liew had heard from Spitler, Maegerle, and McIntosh, which
16 is that the basic rule of thumb was after five years, you are
17 free to use what's in your mind.

18 And that's communicated to Pangang. Pangang puts it in
19 their risk assessment. This is reasoned consideration by
20 responsible people of intellectual property issues with a
21 conclusion that they're okay, but the Government wants to just
22 take snippets.

23 So this puff letter is not evidence of an effort to be
24 disloyal to the United States and benefit the Communist Party
25 of China. There's snippets in it that if the Government, you

1 know, picked and choose, they could say it's some evidence; but
2 there's not enough in this letter for you to conclude beyond a
3 reasonable doubt that there's any intention here other than a
4 small businessman trying to get a job and exaggerating his
5 credentials and history.

6 You know, we stipulated Mr. Liew didn't get a Ph.D. from
7 Stanford. He told a lot of people that. He was embarrassed
8 about, you know, a mere Master's in electrical engineering from
9 the University of Oklahoma, which would be good enough for many
10 people. He'd been an immigrant to this country. He had risen
11 to a position of being a master of electrical engineering; but
12 in trying to do this big job, he felt that wasn't good enough.
13 So he put in the puff letter, "I have a Ph.D. from Stanford."
14 He said a lot of other things that were exaggerations. So if
15 you look at the letter as a whole, it's no evidence of true
16 motivation.

17 And keep in mind when you heard from Professor Lewis, our
18 expert on China, there are cultural traditions -- he called
19 them *guanxi* -- that might lead you to write a letter that is
20 different than the kind of business letter you'd write in the
21 United States.

22 So there is a certain amount of legitimate exaggeration,
23 as Professor Lewis put in there. And he admitted that there
24 were just lies in the letter; that this is not, you know,
25 proper *guanxi*. It was kind of fake *guanxi*. But if you look at

1 this letter, it is in a cultural context where you are going to
2 say things that are not what you would expect to see in an
3 American business letter.

4 So looking at it in that cultural context, looking at
5 Mr. Liew as a small businessman trying to get a job with a
6 cover letter that exaggerates like crazy, this doesn't show his
7 true intention.

8 His true intention was like any small businessman. He was
9 trying to get a contract, he was trying to make money, and
10 there's no evidence beyond a reasonable doubt to suggest
11 otherwise.

12 The other thing the Government wants to try to prove is
13 this other route as showing somebody to be guilty of economic
14 espionage, which is that you intend to benefit a foreign
15 instrumentality; and you'll see in the Court's definitions and
16 instructions that this has got to be a company dominated by the
17 Communist Party in effect.

18 But if you look at the ones -- if we just go back here,
19 what's on the screen now is kind of the chart that
20 Professor Lewis drew for you, and it describes all the
21 different entities that are involved here. And in the
22 instructions you're going to see that there are four entities
23 that are alleged to be the foreign instrumentalities, and let's
24 walk through them.

25 PGSVTC, this is a state-invested entity; 64 percent of it

1 is owned by private shareholders, including Citibank, Morgan
2 Stanley, other big American companies. So the state has an
3 investment in it, but it's a minority interest. It's listed on
4 the Shenzhen Stock Exchange, and Professor Lewis said it was
5 like a public company in the United States. So that's one
6 thing that's alleged to be a foreign instrumentality, and it's
7 no such thing.

8 PIETC, this is kind of the contracting arm, and this is
9 also a state-invested entity owned by the one that we just
10 talked about, PGSVTC, the public stock exchange company. And
11 PIETC initial buyer, and then the agent on the 30K contract and
12 the buyer for the 100K contract. So it's on all of these
13 deals, and it's state-invested minority interest, not
14 dominated.

15 Pangang Titanium, state-invested entity again; and this
16 one replaced Pangang Group as the end user of the 100K
17 contract, and this was the entity that ultimately received the
18 designs for the 100K contract. That's Pangang Titanium.

19 Now, Pangang Group is the one that the Government dwells
20 on. Again, it's this kind of focus on what helps their case,
21 and pretend the rest of it doesn't exist. Pangang Group is the
22 only Central state-owned entity here; and it was the end user
23 of the 100K project for a short while, but it was replaced very
24 quickly and no direct involvement. It had nothing to do with
25 the 30K contract at all, and this is the hook that the

1 Government has to prove beyond a reasonable doubt.

2 Now, the way they try to do it, they called I think it was
3 referred to as Employee Number 59,000, Hu Shaocong, a
4 translator for Pangang Group who was the one guy in the
5 Petaluma office. You remember meeting him, and he testified to
6 a single phone call with a secretary who relayed a message
7 about the status of Mr. Liew's application; and from that phone
8 call, the Government wants to argue beyond a reasonable doubt
9 that these are state-controlled entities. One anecdote that
10 just falls way short.

11 And then Pangang Jinzhou is, you know, completely
12 unrelated. It was the entity -- it's not even alleged to be a
13 foreign instrumentality, and that was the entire 30K contract.
14 So if you look at 13 years of work, the entities that Mr. Liew
15 was dealing with, Professor Lewis, who is an expert on China,
16 on Chinese law, on current state of how the Communist Party
17 interrelates with these entities, established for you that all
18 of these entities, except one, Pangang Group, aren't even in
19 the ballpark and that Pangang Group was only involved in the
20 100K contract very briefly.

21 And from that you simply can't conclude beyond a
22 reasonable doubt that all of these entities are foreign
23 instrumentalities, let alone that Mr. Liew's intention was to
24 benefit them.

25 These are contractual parties on the other side of the

1 table. He's negotiating with them. He's not intending to
2 benefit them. He's doing what any businessman would do.
3 They're the party on the other side of the table. It's a zero
4 sum game. You're trying to get a good deal for yourself and
5 your company. The other company has the opposite interest, and
6 your intention is not to benefit them.

7 So, again, there's an attempt charged with economic
8 espionage. This has the same problem as attempt we talked
9 about before. There's no proof of Trade Secret 1 or intent to
10 copy it; and it's got another problem, which is there's no
11 proof of intent to benefit the Chinese government or foreign
12 instrumentality.

13 Let's talk about possession. So this is the Government's
14 fallback is: Well, okay, maybe over 13 years there wasn't this
15 kind of grand scheme, but at least we can get him on possession
16 because these things were found in his closet or his garage or
17 USAPTI's office in the case of Trade Secret 3.

18 But possession is not that simple. This is also a crime
19 that requires a specific mental state, and it particularly
20 requires that the item was, in fact, a trade secret. It
21 requires the defendant knew them to be trade secrets; that he
22 knew them to be stolen or appropriated, obtained, or converted
23 without authorization; that he intended to convert them to the
24 economic benefit of someone other than the owner; and he knew
25 or intended that the offense would injure the owner of the

1 trade secret.

2 So this requires a number of pieces of proof. You can't
3 just say, "Here's a piece of paper and it was found in
4 Mr. Liew's house, so he possessed it." And then you bring in
5 the DuPont witness who goes, "Ooh, it's very important. It's a
6 compilation of trade secrets, boom, it's done." That's not the
7 crime of possessing a trade secret. Counts 6 and 7 tell you
8 what it is.

9 Now, Paul Cooper looked at -- he spent a lot of time going
10 over each of these because, you know, each one of them is a
11 separate federal crime, as the Government's alleged it, and he
12 told you Trade Secret 4 completely blank, devoid of useful
13 information.

14 He told you Trade Secret 2 is -- contains information, but
15 all of it publicly disclosed or readily ascertainable and
16 devoid of value. Doesn't meet the criteria for a true trade
17 secret.

18 And Trade Secret 3, same thing. That's what he told you.
19 He looked at those old pieces of paper and told you that they
20 didn't meet the legal criteria.

21 So let's look at it. Trade Secret 4, this Edgemoor R&D
22 flow sheet from 1988. You remember this one. It's completely
23 blank in the guts of it. The interesting part of these
24 diagrams is the flow sheets or the flow table. It's completely
25 blank. There is nothing else in this document.

1 There are references to an Aspen model X25, but those are
2 meaningless. It would be like saying go look at cell C3 in my
3 Excel spreadsheet that's in my computer at home. That tells
4 you nothing about what is in that cell of some other
5 spreadsheet.

6 Paul Cooper told you this thing was useless and contained
7 nothing of interest. And the government barely talked about
8 it.

9 Trade Secret 2, this one at least is filled in. But Paul
10 Cooper told you, too, that this one didn't meet the criteria
11 for being a trade secret.

12 And he did go through the oxidation reactor. It's your
13 memory that controls. He went through every item on this
14 colored map version of the trade secrets, and talked about each
15 one of them and told you that there's nothing on there that
16 would be useful. In fact, his conclusion, you would be better
17 off not having this piece of paper than using it in any way.

18 Mr. Axelrod said yesterday that a good example of use of
19 these things, the best example, I think were his words, was
20 Exhibit 70, which is an email in evidence where Mr. Liew and
21 Mr. Maegerle are talking, and Mr. Liew says look at these
22 numbers from the sheet I got from Spitler and here they are.
23 And those numbers line up with one line on the mass balance
24 table.

25 But what you'll recall Paul Cooper explained, it was

1 Mr. Maegerle's response, which is, thanks, I will stick with my
2 original numbers.

3 And I submit to you, that is not the best example of
4 reference to these pieces of paper. It is the only example.
5 The only example. And it's one email where Mr. Maegerle just
6 said, no, thanks, I'll stick with my own numbers.

7 So this thing, to the extent that the measure of value is
8 the extent to which he used it, Trade Secret 4, zero. And this
9 one, kind of minus 1, if you will, in terms of evidence that
10 these things were ever used.

11 Let's look at Trade Secret 3, the Sills/Diemer pamphlet in
12 the Fortran code.

13 Talk about number of witnesses in this case. The
14 government thought it good to fly Thongchai Thongthawee 19
15 hours from Thailand, to take a video deposition, to tell you
16 what? To tell you that he was so bored reading this that he
17 fell asleep while reading the Fortran code; that he doesn't
18 speak Fortran; and that he got nothing of value out of this.
19 That's what Thongchai said. So what conceivable value could
20 this piece of paper have?

21 What about the rest of the report? They brought in
22 Dr. Diemer to talk at length about the paper, academic paper
23 that his summer intern wrote, Trade Secret 3.

24 Paul Cooper, again, talked about this and told you that if
25 you have an adjustable slot reactor this is not helpful. And

1 he also told you that this area of modeling, what happens
2 inside a chemical reactor process has been overtaken by events.
3 This is a 1993 document.

4 Think back to what computers were like in 1993.
5 Monochrome monitors, floppy disks. Some of you probably don't
6 even know what I'm talking about. Slow, terrible computers.

7 Compare that to what we have today, and the massive
8 processing power in just a laptop, let alone a server that's
9 available to scientists.

10 And think about the differences in software. That
11 Fortran, that creekly old computer language to do the Diemer
12 equation has been replaced by computational fluid dynamics,
13 vastly more powerful software, that would be the way. If you
14 were at all interested in modeling a chemical process, you
15 would not think to look at a 1993 era modeling monograph.

16 And, sure, Mr. Diemer will come in and say it's not been
17 published; and that there is interesting information in here
18 about dimensions of things at other places. But there's zero
19 evidence that this was actually used in any way.

20 In fact, the evidence, the only evidence about it was the
21 Thongchai evidence we talked about. And Jian Liu, L-i-u, came
22 in to tell you that he asked Mr. Liew to look at it. And that
23 was it. Mr. Liew gave it to him, and he looked at it.

24 There was no evidence that anything from this was ever
25 used. And if that's the measure of value, again, zero value.

1 And that was Paul Cooper's opinion.

2 Now, why would Mr. Liew even have anything from another
3 company? Why would he have this in his possession? Isn't that
4 suspicious in some way?

5 But you heard from Connie Hubbard, who is the head of
6 competitive intelligence at DuPont, who came in early in the
7 trial and told you about what she called the mosaic approach to
8 competitive intelligence, what DuPont does.

9 Up on the screen is a close-up of a mosaic, a young woman.
10 And you can see there's little tiles, oddly shaped, that an
11 artist can make into a beautiful picture. You can even do
12 Van Gogh's Starry Night in a mosaic with all the little tiles.

13 So the mosaic approach, as Ms. Hubbard described it, is
14 you can go out into the world as a company and try to gather
15 little tiles. And you then put them together in your own
16 picture of the competitor landscape, or how other plants work,
17 or anything of that nature. And that it is perfectly
18 appropriate to go out, take pictures from public places; talk
19 to people at trade shows, see what they'll tell you; gather
20 documents if people are willing to give them to you. All of
21 those things are perfectly appropriate. Google Earth,
22 perfectly appropriate.

23 And these big companies have whole departments of people
24 that do this. Connie Hubbard was there. Mr. Dayton spent a
25 lot of his career in competitive intelligence at DuPont.

1 So what Mr. Liew was doing was his own version of small
2 business intelligence.

3 Exhibit 1016, this is in evidence, taken from Mr. Liew's
4 computer. And what it shows is a section of a memo:

5 "Obtain Technology. Patent Search. Sunnyvale Patent
6 Library. Contact patent owner. Join ACS. Get to know
7 the experts. Attend shows. Join the hospitality banquet.
8 Read magazines. Collect company and product info."

9 This is the small business version of the competitive
10 intelligence department at DuPont. And, yeah, he went out.
11 You saw his notebooks. He gathered up patents and he also came
12 across things like these, the items that were found in his
13 closet.

14 So mere possession, the physical possession of things, is
15 not the crime. And it's not even suspicious that he might be
16 out there trying to see what he can get in the world to
17 assemble, you know, his picture of what's out in the public
18 domain.

19 And what you see, too, I mean, the government would have
20 you think that, you know, this is the Rosetta Stone, in some
21 way; that this was the kind of key discovery that led to
22 everything that Mr. Liew did.

23 But there's no evidence of that. And there's overwhelming
24 evidence that we presented throughout the trial that talks
25 about the different phases. For a day and a half I went

1 through with Paul Cooper each -- we did the walk-through of the
2 3D model.

3 And what I've got on the screen now are those three
4 computer-assisted design pieces from the slides that I went
5 through with -- Mr. Guevara was able to show you, you know, in
6 AutoCAD you could move everything around. You remember all of
7 that.

8 So these are some screenshots taken from that
9 presentation. The top one is the whole chlorination part; the
10 middle one is the oxidation; and the bottom one is finishing.

11 Each one of those is made up -- if we're going to do this
12 to scale, there would be 10 million tiles on the screen. But
13 just for artistic sake, we've simplified it.

14 And what Mr. Cooper told you and what you've learned
15 throughout this trial is that there are functions in these
16 plants that are essential to doing the chloride route: coke and
17 ore handling; the chlorinator; spray condenser; condensation;
18 scrubbing; on and on and on.

19 There are a limited number of ways to do these things.
20 Engineers face these problems. There are vendors for many of
21 them. You go to the vendors. And it makes sense that many of
22 these projects look very similar. And to the extent that they
23 don't, it's in fairly subtle and minor ways.

24 And there is nothing wrong with going out in the world and
25 trying to figure out what your competitors do. But that is a

1 far cry from possessing something that you believe to be a
2 trade secret.

3 Now, when Paul Cooper tells you that these things are not
4 trade secrets, that supports the idea that Mr. Liew didn't
5 believe them to be either.

6 So let's talk about Count Eight, copying Trade Secret 5.

7 This is the Basic Data Document (indicating). You've got
8 to keep in mind when you're looking at this, this is in
9 evidence, you'll have it, but you've got to keep in mind where
10 it came from. This came from DuPont, provided to the
11 government. This was not seized from Mr. Liew; it wasn't
12 seized from USAPTI; it wasn't seized from Mr. Maegerle. This
13 came from DuPont as part of their effort to help the government
14 build a case.

15 And the allegations in Count Eight require -- they're up
16 on the screen now. It requires that this actually be a trade
17 secret; that the defendant in question knew it was a trade
18 secret; knowingly copied it; intended to convert it; knew it
19 would injure the owner; and related to a product in interstate
20 commerce.

21 So when you look at 161, keep in mind, this is after the
22 great white has gotten interested in this particular company
23 and is on the attack, and they're trying to figure out how to
24 build a case.

25 They provide a copy of their Basic Data Manual and

1 obviously go through it with a fine-tooth comb to try to find
2 anything in it that matches something that USAPTI did.

3 And the government went through at great length a summary
4 exhibit with Mr. Dayton. It's up on the screen now. It's back
5 there. It's a big poster board.

6 And when you look at it back in the jury deliberation
7 room, keep in mind what testimony this really related to,
8 because the Court will instruct you that although a summary
9 exhibit goes back into evidence, it's only as good as what
10 underlies it. And what this big poster board was was nothing
11 more than taking pages of this document, which is really long,
12 and comparing it to language in emails that Mr. Maegerle wrote
13 to Mr. Liew.

14 And they found 28 examples of where the language matched.
15 And Mr. Dayton, took a better part of a day to go through all
16 of that. Mr. Dayton would occasionally go, you know, is that
17 in the public record? No. Move on to the next one.

18 That doesn't tell you anything about what's a trade
19 secret, because the government -- the government witnesses
20 admitted that not everything in this is a trade secret. Lots
21 of it is publicly available. Lots of it is common knowledge.

22 And they never really said -- again, it's kind of Lucy and
23 the football. They never said what parts were proprietary and
24 what parts weren't. They want to say, oh, well, it's the
25 compilation, it's the unique compilation; this particular thing

1 has not been published in *The New York Times*, therefore, it is
2 a trade secret.

3 But then when it comes down to, like, well, what evidence
4 do you have with this whole thing was in Walter Liew's
5 possession? None. What evidence do you have that he knew it
6 even existed? Pretty much none.

7 The government will argue that mentions of, quote, basic
8 data in the emails would have told Mr. Liew that there is a
9 thing -- that there is this thing. But that doesn't compute.

10 So what we're left with of the summary exhibit is kind of
11 a word comparison that I'm sure Mr. Froelich will address in
12 more detail.

13 But from Mr. Liew's perspective, in the course of a
14 13-year set of projects he gets a handful of emails -- take a
15 look at the dates on these exhibits. The one that's on the
16 screen here, 2009, 2008, one in 2010. I mean, there's a
17 handful of emails in the course of 13 years, where the
18 government's big proof is, aha, in this email there's a mention
19 of Kuan Yin or a mention of Basic Data. And, looky here, those
20 words line up with some page in here.

21 Okay. So that may tell you something about Mr. Maegerle's
22 source of knowledge or not. And I will leave that to
23 Mr. Froelich to address. It tells you nothing about Mr. Liew's
24 knowledge about this document. There's no evidence that he
25 knows what the heck this thing is or that DuPont even has one.

1 In fact, you heard a ton of evidence that, oh, this is a big,
2 dark secret that's kept in the bowels of DuPont.

3 So keep in mind that on this particular count, from
4 Mr. Liew's perspective, the summary exhibits are just a word
5 overlap game in which there's nothing to suggest criminal
6 activity by Mr. Liew. Especially in light of testimony you
7 heard about "basic data" is a term with various meanings.

8 It's kind of weird that what DuPont claims and the
9 government claims to be this big secret is called "Basic Data."
10 That sounds like the opposite. It's basic. It's what
11 everybody would know to start with.

12 And if you take a look at Exhibit 55, this is a document
13 that refers to Basic Data supplied by the buyer. This is
14 Mingbo, another contract. And it's the initial data that the
15 buyer tells you about their titanium slag requirements and
16 things of that nature.

17 So there's nothing about the words "basic data" that are
18 magic or would alert somebody that they're, you know, being
19 told trade secret information. There's nothing in the words
20 "Kuan Yin," really, that would tell that Kuan Yin, that it's
21 from some misappropriated source.

22 So that's the end of the trade secret charges. And I
23 appreciate your patience in going through. This is a lot of
24 testimony. It was somewhat dry at times, but I think you're
25 now pretty much familiar with the terms and able in your

1 deliberations to sort out what the evidence is as to what's
2 really a trade secret and what isn't; what the agreement really
3 was here; and whether it was an agreement to commit criminal
4 acts or what we contend; and whether there was an attempt to
5 copy anything known to be a trade secret.

6 So I want to turn to what I called in opening the tack-on
7 charges. Financial charges. They are serious and they're to
8 be taken seriously. But, really, the essence of this case is
9 the trade secret and espionage charges, so I want to spend
10 increasingly less time on these, I hope.

11 But let's talk about the tax charges.

12 What the government alleges is a gross receipts false
13 statement. You wouldn't know that from their graphics and
14 their closing argument, but if you really look at what the
15 Court's instructions are, there's a very particular federal
16 crime that's charged here. And it requires that for each tax
17 year at issue Mr. Liew made and signed a tax return that he
18 knew contained false information; and, most importantly, that
19 in filing that false tax return he acted willfully.

20 And in order to act willfully you have to find beyond a
21 reasonable doubt that he knew federal tax law imposed a duty on
22 him and that he intentionally and voluntarily violated that
23 duty.

24 So the government likes to paint with a broad brush here
25 and just talk about the amounts of money. And, yes, there's a

1 lot of money involved.

2 These plants, as I mentioned, cost hundreds of millions of
3 dollars to build. The engineering and other fees associated
4 with a project like this are going to be in the neighborhood of
5 28 million. Now, that's for two different projects, 30K and
6 100K.

7 And if you look at the contracts, you're going to see
8 there are equipment expenses and other things in there. But,
9 still, it's a lot of money. And I don't intend to diminish
10 that. But the amount of money doesn't tell you anything about
11 the alleged crime and whether the government has proved it.

12 What the evidence showed about these transactions is that
13 the money was received via letter of credit transactions.

14 We heard from Joseph Chan from Mega Bank. He had to come
15 a little bit out of order. It was earlier in the trial then;
16 when the government presented most of its tax evidence late in
17 the case.

18 You remember he was a gentleman in his early 60s. Very,
19 very polite bank executive. And he told you about how the
20 money actually gets transmitted and how these transactions
21 work.

22 And as you can see on the screen, you start with a
23 contract between the parties, either Pangang for a 100K or
24 Jiang Zhou for the 30K, and USAPTI or Performance Group,
25 depending on which plant we're talking about.

1 So you have a contract. And under that contract there
2 were milestones. And when the milestones were met, Pangang or
3 Jinzhou would talk to their China Correspondent Bank.

4 And what you've got in evidence, and an awful lot of what
5 are in those boxes are just the huge amounts of just kind of
6 the wire transfer stuff and the paperwork associated with these
7 complicated transactions.

8 But to kind of distill it down to the basics, the China
9 Correspondent Bank then tells Mega Bank, you know, here's the
10 money, and we are sending the money to you.

11 Mr. Chan said that the money goes into a suspense account.
12 It is the account of Mega Bank. And he told you that Mr. Liew
13 didn't have any bank accounts at Mega Bank; Performance Group
14 didn't have any bank accounts there; and USAPTI didn't have any
15 bank accounts at Mega Bank, the U.S. Correspondent Bank.

16 And then you saw that Mr. Liew then instructed, he writes
17 letters, that's the black line up on the graphic, he writes a
18 letter to Mega Bank saying please disburse the money as
19 follows.

20 And then the money goes off to different payees. Many of
21 them the Singapore companies, but some of them going to the
22 USAPTI or Performance Group, their bank account.

23 So what was the evidence? That's the background of how
24 this money traveled. What is the evidence as to how they
25 prepared their taxes?

1 So you heard from Phillip Guan, the accountant, CPA, small
2 office kind of out near Bayview. And he came in and told you
3 how things worked. Mr. Liew would come out once a year and
4 bring his bank records and his bookkeeping records that were
5 kept on QuickBooks.

6 And the tax returns were prepared and signed in a single
7 in-person session. They would get together, go through
8 everything, discuss the issues, and then do the tax return
9 there. And Mr. Guan said this was his typical practice.

10 What evidence of willfulness was there, really? USAPTI
11 reported as gross receipts what was received into its bank
12 accounts, the part of these transfers that went into its bank
13 accounts.

14 And there's no evidence that Mr. Liew knew rules to the
15 contrary. The evidence was that his wife, Christina, handled
16 the financial aspects of the business. So these once-a-year
17 trips to the accountant were not part of what Mr. Liew did most
18 of the time.

19 There's no evidence of the issue being raised by Mr. Guan.
20 Now, of course, Mr. Liew didn't get into all the complexities
21 of his overall business. What he did was he brought what
22 Phillip Guan normally does, bank accounts and bookkeeping
23 records.

24 Now, you heard from Revenue Agent Jiang what the rules are
25 here. She's an expert in this area, from the Internal Revenue

1 Service. And she told you it depends on four things.

2 First of all, she said not all money that a corporation
3 receives counts as gross receipts. There's lots of just
4 getting the money at your doorstep doesn't count. It depends
5 on the structure of the contract. It depends on the type of
6 corporation, a C corp. or a sub S, for example. And in that
7 regard, for a C corporation, what she told you is that, yeah,
8 you're supposed to report the amount under the contract. But
9 for a sub S corp. it passes through to the underlying
10 investors. And there's no evidence that Mr. Liew knew the
11 difference between tax treatment of a C corp. and an S corp.

12 It depends on the degree of control. And the prosecutors
13 made a big deal about the degree of control Mr. Liew had over
14 these funds. Fair enough. But there's nothing to suggest that
15 he knew how this relates to federal tax law.

16 And then, finally, and most importantly in some ways, the
17 uses to which the money is put. You remember that with Agent
18 Jiang we went through in detail Exhibit 525. So this was one
19 of a zillion wire transfer things that showed the paperwork.

20 And you will recall that I pointed out to her, geez,
21 there's these L/C transfer to Thayer Scale and Delta/Ducon for
22 tens of thousands of dollars, that go straight out of the
23 suspense account to these vendors. And, yet, she did not
24 include these in gross receipts. And she agreed, in the end,
25 that, yeah, that's proper not to count those. She stood by the

1 way she calculated it and said it was proper.

2 The government then on redirect said, well, there were
3 other L/Cs, these were domestic companies that had their other
4 L/Cs. And it got even more complicated.

5 But the fact is that not every dime that was received in a
6 kind of common sense way by the corporation in a tax way counts
7 as gross receipts on that one line.

8 So I would just encourage you to keep your eye on what the
9 proof is and what's innuendo and what's proof.

10 Innuendo is something that you probably heard politicians
11 do during campaigns. What they say is, I'm not saying my
12 opponent is an embezzler, but I'm just saying take a look at
13 the XYZ Corporation. That way of turning a phrase, I'm not
14 saying this but, you know, and then they go on to basically
15 communicate the innuendo, the suggestion of wrongdoing when you
16 can't prove it, and you simply want to muddy the waters and
17 dirty up your opponents. So what politicians do, it's called
18 innuendo and it's not evidence.

19 I mean, there's no evidence in this case -- there was lots
20 of innuendo that Walter Liew is greedy and his money was
21 funneled to him and his family, and plenty of innuendo and lots
22 of graphics and lots of name calling.

23 But there's no evidence that any money actually went to
24 him. Agent Ho -- or Agent Rometo admitted as much.

25 And you heard from many witnesses, there's just no ability

1 to get documents from Singapore and from China that would be
2 sufficient to just trace this all out.

3 So distinguish, when you're thinking about this, what the
4 crime is about is Walter Liew's mental state when in those
5 day-to-day, once-a-year sessions with Phillip Guan what did he
6 think he was doing when he signed it. Was he willfully
7 violating a known duty, or was he just going about what seemed
8 to be sensible at the time, which is the money received is kind
9 of what went into your bank account.

10 It's really, the focus is on those meetings with Guan.
11 It's not on look at all these Singapore companies and, you
12 know, money to China. There's no evidence in this case as to
13 whether any of those parties paid taxes themselves, whether
14 this was treated as a passthrough with tax obligations to the
15 recipient rather than USAPTI.

16 There's just -- I talked to Revenue Agent Jiang about
17 that, and she said she didn't know whether taxes had been paid
18 in China or Singapore or anywhere else.

19 So what happens on the other side of the world is not
20 relevant to what Walter Liew's mental state was here in the
21 United States when he signed those tax returns. And innuendo
22 is not proof.

23 **THE COURT:** Mr. Gasner, would this be a good time to
24 break?

25 **MR. GASNER:** Absolutely, Your Honor.

1 **THE COURT:** Ladies and gentlemen, we are going to take
2 our morning break. Remember the Court's usual admonition:
3 Keep an open mind; don't discuss the case. And we'll see you
4 in 15 minutes.

5 (Jury out at 9:45 a.m.)

6 **THE COURT:** May I assume you're almost done? It's
7 been about three hours. Are you almost done?

8 **MR. GASNER:** Almost done.

9 **THE COURT:** A few more minutes and we're going to
10 stop.

11 **MR. HEMANN:** Your Honor, we have a quick issue we
12 wanted to raise with regard to Mr. Froelich's closing. We can
13 do it now or when the Court comes back.

14 **THE COURT:** Let's do it real brief.
15 Everybody be seated.

16 **MR. HEMANN:** It can be very brief. As we were
17 reviewing last night and looking at some of the exhibits
18 Mr. Gasner had referred to in his closings argument, we
19 realized that two of them -- and I believe that they're
20 Exhibits 1008 and 864, these are the legal notes regarding --
21 one that mentions Mr. Finato and one that was around the same
22 time were admitted -- I'm sorry, 694, Your Honor --

23 **THE COURT:** All right.

24 **MR. HEMANN:** -- and 1008 were admitted solely for the
25 state of mind of Walter Liew. And these are the documents that

1 the metadata connects to Mr. Liew's computer.

2 We believe that it would not be appropriate, given the
3 limited basis for the admission of those documents, for
4 Mr. Froelich to argue in his closing that those documents are
5 evidence of Mr. Maegerle's state of mind.

6 I've got the record cites, Your Honor, as to those
7 documents, and I'm happy to hand them up to the Court. But
8 they were both admitted solely for the purpose of Mr. Liew's,
9 who's purported to be the author, mental state.

10 Neither Mr. Axelrod nor I want to object during
11 Mr. Froelich's closing so I thought it would be advisable to
12 raise that when the jury was not present.

13 **MR. FROELICH:** Your Honor, at the time of those -- as
14 the state of the case at that time, there was nothing -- that's
15 the way it was. But I submit, Your Honor, the case is in a
16 different state now.

17 My client testified -- didn't testify, but the government
18 put in evidence of my client's statements about that he told
19 the FBI five years, and that he told the FBI that he did not
20 believe it was trade secrets.

21 The government in its closing argument basically said my
22 client lied, my client lied, and this was made up, this was
23 made up when the FBI came to my client's house. That's what
24 they argued, that this is all -- when the government calls, my
25 client made up.

1 That shows that my client was telling people this in 2004.
2 My client was interviewed in 2011. So I think between what the
3 government put on evidence since then and their argument allows
4 that to be a consistent statement because they have argued that
5 my client lied.

6 **THE COURT:** All right.

7 **MR. FROELICH:** That was their argument.

8 **THE COURT:** Last word, briefly.

9 **MR. HEMANN:** Very briefly, Your Honor.

10 The 2011 statements that -- which were the statements
11 Mr. Axelrod mentioned in his argument obviously are fair game
12 for Mr. Froelich. It does not change either the limited nature
13 for which those documents were admitted nor the fact that they
14 are both hearsay that were admitted over the government's
15 objection for a limited purpose.

16 They are connected in no way to -- to Mr. Maegerle. And
17 the evidence rules simply don't permit the sort of
18 bootstrapping Mr. Froelich is suggesting.

19 **THE COURT:** I get the argument.

20 I'm not changing my ruling. The evidence is closed. All
21 of the evidence is in for whatever purpose I allowed it. I'm
22 not going to reconsider a ruling that was made. There was no
23 request before the close of evidence, by you, Mr. Froelich, to
24 change the basis upon which that was ruled on. You could have
25 done it. I'm not going to change the evidence upon which

1 both -- all sides relied in preparing their closing argument.

2 So you're not going to be able to argue the truth of the
3 matter or that that relates to Mr. Maegerle's state of mind.
4 It's in for whatever reason it was in. I gave a limiting
5 instruction, and I'm not changing that.

6 That's the ruling of the Court.

7 **MR. FROELICH:** Your Honor, there is one other thing.
8 I certainly -- though that went in for the state of mind, and
9 take the statements out, I'm going to argue and I'm going to
10 tell the government now, and the Court, that one of the
11 documents that was in contained about -- and it's been argued
12 by of the government and by the defense that this was old
13 DuPont technology. And that's not my client's state -- I mean,
14 that's --

15 **THE COURT:** Well, my ruling is what it is. I'm not
16 going to micromanage the closing argument. I told you what the
17 ruling is, and I will enforce it.

18 Again, you need to wrap up. It's too long. It's too long
19 strategically and also in terms of the resources.

20 **MR. GASNER:** I just need to hit the obstruction
21 charges. And I think 15 minutes should do it, Your Honor.

22 **THE COURT:** That's fine. I'm not going to cut you
23 off.

24 **MR. GASNER:** I appreciate that, especially in my big
25 finish such as it is.

1 **THE COURT:** Well, I will look forward to it. Not
2 really, but thank you.

3 (Laughter)

4 (Recess taken from 9:50 to 10:05 a.m.)

5 **THE COURT:** All right. Please bring in the jury.

6 (Jury enters at 10:06 a.m.)

7 **THE COURT:** Please be seated. You may wrap up,
8 Mr. Gasner.

9 **MR. GASNER:** Thank you, Your Honor.

10 Thank you for your patience, ladies and gentlemen. I have
11 taken up more than my fair share of time so I'm going to be
12 very brief as to the remaining charges.

13 The bankruptcy charges you heard about, and I just want to
14 say a few things there, Exhibit 507 is the petition. That's
15 really the core of the bankruptcy charges. It's a complicated
16 form that Mr. Liew filled out quickly, with the help of his
17 lawyer.

18 If you look at page 13, those are the creditors that were
19 involved. It's \$134,000. And my one point here is that if
20 Mr. Liew actually had control of all these millions of dollars
21 that he had supposedly funneled, as the government dwelled on
22 in their closing, why on earth would he go bankrupt over
23 134,000, and subject his companies to the scrutiny of the
24 bankruptcy trustee and the scrutiny of others, and putting all
25 this in the public record?

1 I submit to you it makes no sense. If he had been
2 conducting this massive scheme to steal money and to engage in
3 stealing of trade secrets, why would he go bankrupt over
4 \$134,000? Wouldn't it make much more sense to simply settle
5 these lawsuits and keep everything quiet?

6 You heard from Steve Amerine, they really were broke in
7 2008. He told you that Mr. Liew was worried about money.

8 You know from your own experience of public events in
9 2008, the world had pretty much turned upside-down with the
10 bankruptcy of Lehman Brothers. Lots of companies were going
11 bankrupt in this time frame.

12 What we're talking about here are checkmarks on forms.
13 You'll see the Count Twenty, the executory contract claim, that
14 boils down to very dense language with a legal term at its
15 heart, "executory contracts."

16 Mr. Liew checked "no executory contracts." Is that a
17 fraud on the bankruptcy court or a confusion over a form with
18 legalisms and lots of dense language?

19 There's no evidence who put the check mark there, whether
20 it was him or his lawyer. The bankruptcy expert told you these
21 are done on computer forms. The checkmarks are often put there
22 in advance. There's no evidence of knowing falsity. There's
23 no evidence of intent to deceive.

24 Likewise, for these other questions that are charged in
25 count after count, federal crimes, each one on a different

1 question. And there's a complete disconnect to the evidence
2 that you heard in this case.

3 All you heard in this case, really, was a bankruptcy
4 expert explained the system to you, and then this form. And a
5 lot of innuendo, well, it was all obviously knowingly false,
6 with no evidence on the details.

7 Obstruction allegations. There are a ton of them in this
8 case. Lots of the later counts, each little bit of supposed
9 obstruction.

10 And the government's theory is that people, when
11 confronted with authority, either tell the whole truth, which
12 an honest person would do, that's their view of the world, or
13 they lie, and that shows that they really are guilty, that the
14 lie shows the guilt. And they're trying, by bringing these
15 charges and emphasizing this over and over again, to get you to
16 use this as a shortcut.

17 And I don't have time to walk through each one of these
18 obstruction allegations, and I want to give you a single
19 anecdote to think about when you think about these charges.

20 One of my daughters was driving back from a concert with a
21 friend of hers back east. And she and her girlfriend were on a
22 lonely stretch of interstate back in North Carolina. It was
23 dark. And they were -- it was around midnight. They had not
24 been drinking. But they passed through one of these speed
25 traps that you see, where small towns make some of their money.

1 And suddenly the police lights went on behind them.

2 Now, we all know the feeling when the police flashes go on
3 behind us. Immediately our heart stops and we feel a rush of
4 emotion. Even if we haven't been drinking, even if we thought
5 we were obeying the speed limit, even if we don't think we've
6 done anything wrong. But there is a wave of emotion when the
7 police lights go on.

8 And my daughter and her friend had a panicky conversation,
9 what do we do? Because they've seen all these crime shows with
10 like fake policemen, it's a dark interstate, it's two young
11 women in the car. And they're deciding what to do, and they
12 decided to drive to the next interchange where there were
13 lights.

14 And it turns out that was a mistake, that was the wrong
15 thing to do, because the driver got cited for resisting arrest,
16 in addition to the speeding. It was the wrong thing to do.
17 And it was borne out of a panicky conversation between two
18 young women when the police lights went on.

19 And I submit to you that when you look at these
20 obstruction charges, ask yourself, does the government's theory
21 really hold up this idea that you would simply tell the truth
22 and the whole long story when the police lights go on, when
23 DuPont attacks, when James Jubba comes to the door at 9 p.m.,
24 when you've got a civil lawsuit threatening your entire
25 economic well-being? When the FBI shows up at your doorstep at

1 7:00 in the morning, are you thinking clearly? Are you
2 intending to obstruct justice by doing that?

3 I submit to you the answer is no. This is an ordinary man
4 who is not used to search warrants or his world getting turned
5 upside-down. And maybe he didn't handle things in the right
6 way. I mean, had he said to his wife, Don't talk to the FBI
7 agent; it's your constitutional right; wait until the lawyer
8 calls us back.

9 Remember there was evidence about that at the time of the
10 search Mr. Liew was trying to reach his lawyer. And you'll see
11 in all these obstruction allegations there are moments where
12 Mr. Liew probably uses the wrong words. Instead of saying you
13 don't know, you don't know, he should have said, you have a
14 right not to speak to the FBI, or, maybe you should wait until
15 our lawyer calls us back.

16 So maybe he used the wrong words. Maybe my daughter and
17 her friend did the wrong thing by driving to the next
18 interchange rather than pulling over promptly.

19 But that doesn't make it a federal crime. And you should
20 ask yourself like any of these other circumstances, the
21 government has to prove it beyond a reasonable doubt. It's not
22 a crime to assert defenses or constitutional rights.

23 One of the counts that makes this really clear is Count
24 Ten the "answer conspiracy." I guess it's obstruction of
25 justice to disagree with the government or to disagree with

1 DuPont. Because if you look at the evidence here, what
2 Mr. Maegerle wrote to Mr. Liew in this supposed answer
3 conspiracy was the gist of their defense that you heard a ton
4 of evidence about, that you heard from Paul Cooper all about.
5 No trade secrets. Ashtabula technology, dedicated to the
6 public long ago. Yet the government alleges that they
7 conspired to have a defense.

8 It's a bit outrageous. It's not obstruction of justice to
9 oppose the government. It's not obstruction of justice to
10 oppose DuPont. And just because the government has alleged it
11 doesn't make it so.

12 I'm going to jump way ahead and just talk about your job.
13 I know -- Mr. Hemann, by the way, is also going to get up later
14 this morning. I'm not going to have a chance to respond to
15 him. And he will reassemble the house of cards, if you will,
16 and he'll do it in a humorous and persuasive way. And I can't
17 respond to that.

18 But all I can do is ask you, as you listen to him, as you
19 deliberate, is to think about the burden of proof and whether
20 after careful and impartial consideration of all the evidence
21 you're not convinced beyond a reasonable doubt that the
22 defendant is guilty, it's your obligation to find that
23 defendant not guilty.

24 The other part of that instruction, and I've got on the
25 screen now, is that reasonable doubt is the kind of doubt that

1 would make a reasonable person hesitant to act in a matter of
2 importance in his or her personal life. It may arise from a
3 careful and impartial consideration of all the evidence, or
4 from a lack of evidence. Hesitant to act in a matter of
5 importance in your own life.

6 It's hard to imagine an event of more importance in the
7 life of Mr. Liew and Mr. Maegerle and USAPTI than the decision
8 that you have in front of you, so it's hard to come up with an
9 analogy. But people talk about the biggest purchases in your
10 life being a house, if you're fortunate enough to be in that
11 position, or a car.

12 And think about if you're making that important decision.
13 Say you're looking at a house that you're thinking about
14 buying. And you go on an inspection tour and you get into the
15 basement and you see a gigantic crack in the foundation of that
16 house. And you look at the walls, and the walls look thin and
17 flimsy. You would hesitate to act. You'd say, geez, whoa,
18 maybe I better stop and think. And whether or not you decided,
19 ultimately, to buy the house or not, that moment of hesitation
20 when you see a crack in the foundation is what reasonable doubt
21 is about.

22 And I'd encourage you -- or a car for that matter. You
23 see a little leaky oil, a small leak coming out from underneath
24 the bottom. You're going to hesitate to act because something
25 is not right. It's not sure enough.

1 And, now, this isn't about words on a page. This isn't
2 just it's written down on the judge's instruction and you can
3 kind of treat it as just a dry exercise. This is how our
4 relationship as citizens to the government works.

5 This is, really, the protection that we have against the
6 powers that be, whether it be a big corporation like DuPont,
7 whether it be a government at a time of surveillance and police
8 involvement in our day-to-day lives.

9 This idea that we're presumed innocent, that we are all
10 presumed innocent, is what allows us to breathe freely in this
11 country. It creates a zone of freedom in which we operate as
12 citizens. It matters every day of our lives. This is why
13 we're concerned when we feel the government is intruding into
14 our life.

15 And we cherish the zone in which we can feel free; in
16 which we can feel free to start a new business; in which we can
17 feel free to operate that business without feeling as though
18 the government or some big, powerful entity is going to come in
19 without the proper foundation to crush our lives, our hopes,
20 dreams, and our freedom.

21 And that's what reasonable doubt is about. We start off
22 presumed innocent. And what the government must do in these
23 cases, these important criminal cases, is they must prove a
24 federal crime beyond a reasonable doubt. That is the barrier
25 that defines our freedom. It defines the difference as to when

1 the FBI, DuPont, the federal government, the Department of
2 Justice can invade, if you will, that castle of freedom that we
3 have.

4 And they have to climb the castle wall. It's not a speed
5 bump, ladies and gentlemen. This isn't just kind of, well,
6 geez, you know, Hemann made a good rebuttal so he's probably
7 right; or, well, you know, I'm suspicious of some of the stuff
8 in this case. Those are speed bumps.

9 What the law requires you to do is to put the government
10 to its proof. Make them climb that castle wall and prove
11 beyond a reasonable doubt each and every element of these
12 crimes.

13 And I submit to you that if you do that, because I know
14 you will, you've been so attentive, you've been a wonderful
15 jury, I know you'll be wonderful in your deliberations, if you
16 do that I believe that you will reach the conclusion that
17 Mr. Liew and USAPTI are not guilty of all charges in this case.

18 Thank you.

19 **THE COURT:** Thank you, Mr. Gasner.

20 Mr. Froelich, you may make your closing argument.

21 **MR. FROELICH:** Thank you, Your Honor.

22 Your Honor, may I use the podium?

23 **THE COURT:** Absolutely.

24 (Pause)

25 **THE COURT:** You may proceed whenever you are ready,

1 Mr. Froelich.

2 **MR. FROELICH:** Thank you, Your Honor.

3 **CLOSING ARGUMENT**

4 **MR. FROELICH:** Well, ladies and gentlemen of the jury,
5 it's the end of the journey, at least for the lawyers. And
6 it's the beginning of yours.

7 Thank you very much for how attentive you've been. It's
8 been a long trial, a lot of evidence.

9 I want to make it clear that I'm going to argue to you,
10 it's your recollection that controls. I also want to make it
11 clear that I represent Mr. Maegerle and Mr. Maegerle only. And
12 you have to give him your individual attention, and you have to
13 decide his individual case.

14 Now, because of the length of the trial I've got a lot of
15 ground to cover. I don't know if I'm going to be able to cover
16 it. I'm going to try. I know I'm not going to actually be
17 able to cover every piece of evidence, because of the amount of
18 evidence here. And I'm not going to go through witness by
19 witness.

20 What I am going to do is try to outline for you the facts
21 and the evidence which will allow you to make credibility
22 issues and decide the facts of this case as far as my client,
23 which I think is the key element here, is intent, what he
24 believed. That may not have been the proper belief, but as
25 long as he believed it, that's the key issue in this case.

1 Now, I may repeat some evidence and that's because I think
2 there's evidence in this case that support four or five
3 different of my points.

4 I'm also going to rely on notes. Unfortunately -- I don't
5 know how many of you had Catholic school educations, but the
6 nuns and priests taught me not to make mistakes. I'm hoping
7 not to. And I've learned that notes are the best way to
8 travel.

9 So you'll see me looking down a lot, but it's not trying
10 to not look at you or anything. It's me trying to keep what I
11 believe are the important points, that I want to get across to
12 you, straight.

13 What have you learned about Bob Maegerle? He's 78 years
14 old. He's going to be 79. He's a father. He's retired from
15 DuPont. He lives in Delaware. He's married. He started to
16 work for DuPont in 1957, right after he graduated college.
17 Most of his work was in TiO2.

18 I want you to look at Exhibit 722. That was the personnel
19 documents that Maegerle had in his own house, that were seized
20 by the government.

21 What you will see is it sets out Mr. Maegerle's work
22 history with DuPont. You will see that he did work at DuPont's
23 plant in Antioch; that he was a lead engineer when DuPont built
24 the Ashtabula plant for Sherwin-Williams. That's going to be
25 critical in this case.

1 You're going to see that he was in charge of adding
2 chlorine lines -- chloride lines to DuPont's plants in
3 Johnsonville, Edgemoor. You'll see he was involved in DuPont's
4 search for a plant in Taiwan. Then he went to DeLisle,
5 Mississippi. He had the second line in DeLisle. You're going
6 to see that he -- you're going to see that he was the lead
7 engineer on that job. And, finally, that he was in charge of
8 DuPont's efforts to build a plant in Korea.

9 I want to go through those later, okay. Thank you.

10 He retired from DuPont in 1991, after 35 years -- 34 years
11 as an engineer, almost all in the technology part.

12 He retired almost 24 years ago. Long time. Mr. Maegerle
13 receives a pension from DuPont.

14 The evidence is, not only from DuPont's records that
15 you'll see that we were fortunate to get to have here, but the
16 testimony in this case is that Mr. Maegerle was an excellent
17 engineer.

18 Mr. Dayton, DuPont employee, testified Mr. Maegerle was a
19 very experienced engineer, very well thought of at DuPont.
20 Mr. Dayton testified that Mr. Maegerle could probably draw most
21 of a TiO₂ plant from memory. That's how experienced he was.

22 Everyone you heard from in this case who worked with
23 Mr. Maegerle, either at DuPont or at USAPTI, USAPTI, said he
24 was an excellent engineer.

25 When you look at Exhibit 722, you'll see all the awards he

1 won. The evidence will show you not only from the testimony
2 but from that personnel file he was a hardworking, loyal, well
3 thought of DuPont employee. Not an employee that was going to
4 go out and sell trade secrets.

5 In fact, and we'll talk about it later, the authority he
6 had at DuPont.

7 How did Mr. Maegerle meet Walter Liew and USAPTI? You've
8 heard the story. I'm going to go through it very, very quickly
9 because I think there's some key facts that need to be
10 emphasized.

11 Mr. Marinak, Michael Marinak and Walter Liew were
12 partners, and they were trying to get a contract for a TiO2
13 plant in China.

14 Mr. Marinak looks on the Internet, and what does he find?
15 He finds Condux, which advertises itself that has ex-DuPont
16 engineers who are TiO2 experts and can be hired as consultants
17 in TiO2 projects. That's what he testified to.

18 As a result, Mr. Marinak contacted Fred Arbogast. And who
19 is he? He's an ex-DuPont engineer and the vice president of
20 Condux. And Marinak tells him he wants TiO2 experts to help
21 build a TiO2 plant in China.

22 Now, remember where Condux is. It's right, basically,
23 around the corner from DuPont. And it advertises itself as
24 having experienced DuPont ex-employees. You don't think DuPont
25 knows that? You don't think everybody knows it? That's the

1 only thing they do, according to their -- you've seen the bill.

2 Now, remember Mr. Gibney, he never worked for DuPont. He
3 was the supposed government expert. We'll talk about that.
4 Testified he was aware of Condux, and that it advertised it had
5 ex-DuPont employees as consultants experienced in DuPont's TiO2
6 process.

7 Mr. Arbogast, after he hears from Mr. Marinak, he contacts
8 four former DuPont's employees with extensive TiO2 experience
9 at DuPont. By the way, we know all of this through
10 correspondence because the government didn't call Mr. Arbogast.
11 Wonder why.

12 Look at Exhibit 1004. All the ex-DuPont employees put
13 their resumes in, and they all emphasized they're DuPont
14 employees. They're experts in the field of TiO2.

15 With these backgrounds, who do you think -- what do you
16 think people that go to Condux think they're hiring? DuPont
17 knows that. They have all these -- all these people, they're
18 right in the same community. What would you rationally expect
19 from a Condux consultant with that advertisement and those
20 backgrounds?

21 Now, Mr. Arbogast, when he writes to Mr. Marinak, and you
22 can see Exhibit 1004, that letter tells you that, in effect,
23 ex-DuPonts they don't believe they are bound to DuPont or they
24 can't use their expertise.

25 Mr. Arbogast, even he himself, wants to be considered as a

1 consultant and includes his resume. And he starts talking
2 about all his TiO2 experience.

3 And then he writes:

4 "During my recent discussions with Bob Maegerle he
5 indicated that he had past -- he has past approval to
6 consult outside DuPont. However, he may need to update
7 the agreement should you go forward with the project."

8 This is in 1997. Maegerle tells Arbogast, I've got
9 approval. And Arbogast says he may feel. Notice that
10 Mr. Arbogast nor any of the other people say anything about
11 they need to get approval.

12 And the government found, by the way, they've introduced
13 it, believe it's Exhibit 54, the letter that Mr. Maegerle wrote
14 to Mr. Dayton confirming the conversation that he had prior.

15 And what's interesting is, and the government's going to
16 come up and say, well, he said he wouldn't reveal any trade
17 secrets and things, and that's what he said.

18 But what's interesting about it, he refers to five years.
19 You think that's just an accident when he says it's almost five
20 years since I left the company? Does he throw that five years
21 in there? No.

22 I say to you and I submit to you that it speaks volumes.
23 Those letters, those resumes, and Mr. Arbogast wanting to get
24 in, they speak volumes about what DuPont ex-employees felt.
25 They were consultants; they were bound by five years.

1 So then Mr. Maegerle and Mr. McIntosh are selected as
2 consultants. And in early 1998 they go to a meeting in
3 San Francisco where USAPTI is holding a seminar of potential
4 Chinese clients. Both Mr. Maegerle and Mr. McIntosh speak at
5 the meeting. Mr. McIntosh, as you've seen, also later provided
6 TiO2 technology information to USAPTI. Mr. McIntosh isn't
7 here. He hasn't been called as a witness by the government.

8 At the seminar, after the seminar, Maegerle's next
9 contract -- contact with Mr. Liew and USAPTI is in about 2004,
10 when Mr. Maegerle is contacted by them about a potential
11 contract in China with Jinzhou. And Mr. Maegerle and Mr. --
12 because Mr. Liew and Mr. Zisko are seeking a deal in China.

13 This is 13 years after Maegerle is retired from DuPont.
14 And remember the government's charges in Count Two, that
15 Mr. Maegerle engaged in a conspiracy with Mr. Liew and USAPTI.
16 In other words, he agreed to steal DuPont trade secrets in
17 1998. Have you seen any evidence of that? That's ludicrous
18 and not supported by the evidence.

19 I think they argued that, well, he told or in 1997 or 1998
20 he provided them with what the proposed cost of the plant in
21 Kuan Yin, and the number of employees or how many employees
22 worked there. I'll talk about that later, but that was public
23 knowledge.

24 DuPont, one of the executives testified, before DuPont
25 builds a plant they let the public know. They let the public

1 know, particularly in that community, how many people they are
2 going to hire. They advertise for kinds of people. They tell
3 them how much they're going to spend and what the plant is
4 going to cost.

5 DuPont is a public company. You think they can go out and
6 build a plant without revealing everything to their
7 stockholders and everything else? It's public knowledge.
8 Ludicrous. Ludicrous.

9 What is Mr. Maegerle charged with in this case? Let me
10 remind you, this is not a civil case. He is not charged with a
11 breach of contract. If Mr. Maegerle breached some contract he
12 had with DuPont, that doesn't make him guilty of a crime.

13 This is a criminal case. Mr. Maegerle is charged in Count
14 One with a conspiracy that he conspired with USAPTI and Walter
15 Liew to steal DuPont's alleged trade secrets concerning the
16 TiO2 technology, with the intent to harm DuPont.

17 Count Five charges that they attempted the theft of
18 alleged trade secrets at DuPont of chloride route process for
19 making TiO2, again with the intent to harm DuPont.

20 Count Eight charges him with knowingly aiding and abetting
21 Walter Liew, with conveying an alleged trade secret, with the
22 intent to harm DuPont.

23 That charge -- that charge, and the government has argued
24 to this, that this whole entire book, this whole thing is a
25 trade secret (indicating). So they say it's made up of public

1 information and everything, but the whole thing is a trade
2 secret.

3 I submit you to that the evidence in this case shows that
4 Mr. Maegerle didn't have this whole thing. And I'll prove it
5 to you as we go. And I don't have to prove anything.

6 The last charge Mr. Maegerle -- again, Mr. Maegerle is
7 charged with alleged conspiracy to obstruct justice.

8 What does that involve? That involves a civil case in
9 which DuPont sued USAPTI, Jian Liu, who came into the court and
10 testified and never mentioned Maegerle, and Walter Liew.

11 Mr. Maegerle was not a defendant in the case. The
12 government alleges the obstruction of justice was filing a
13 false answer.

14 Well, let's talk about that charge. The evidence in the
15 case, in this case, in this courtroom does not support that
16 charge, no less provide proof beyond a reasonable doubt.

17 In fact, the lack of evidence concerning this charge in
18 and of itself provides a reasonable doubt.

19 Did the government call even one witness, did you hear a
20 word on the stand, to testify about the answer filed in the
21 civil case? Not one word. Lack of evidence, reasonable doubt.

22 There was no witness, no attorney, or judge, or legal
23 expert called by the government -- remember they called legal
24 experts in everything else, in bankruptcy and tax -- to give
25 evidence about how an answer in a civil case constitutes an

1 obstruction of justice. Reasonable doubt, lack of evidence.

2 Did the government even show the answer to you during the
3 trial or have anyone testify about it? What's the answer to
4 that? No. The first time you heard anything about the answer
5 was in the closing argument.

6 Did the government call the attorney who represented
7 DuPont in that civil case to testify how the answer obstructed
8 justice? No. Lack of evidence, reasonable doubt.

9 What happened was DuPont filed a civil suit against Walter
10 Liew, USAPTI, and Jian Liu, as I told you. The government
11 alleges that Maegerle, Mr. Maegerle and Liew conspired, that is
12 agreed to file a false answer. In effect, the government's
13 position is that Liew should not have defended himself or
14 Mr. Maegerle shouldn't have given him any advice.

15 Walter Liew asked Bob Maegerle to give his thoughts on a
16 civil suit. Remember Maegerle is not the defendant in the
17 lawsuit. Mr. Maegerle responded that he did not believe the
18 suit had much merit, and he believed that DuPont's TiO2
19 technology was in the public domain. It's not the first time
20 you heard him say that.

21 In Exhibit 682, Maegerle tells Mr. Liew, When the Court
22 asks for my name feel free to identify me to the Court.

23 It's clear, Maegerle is not hiding. Later he tells
24 Mr. Liew about the sale of DuPont technology to
25 Sherwin-Williams in 1967, and that DuPont's technology had been

1 resold many times.

2 As a result, Maegerle states he believes that DuPont
3 technology is public knowledge. That's what he believes. And
4 there's a basis for that belief. And we're going to show you
5 even more basis for that belief.

6 So USAPTI, Walter Liew -- and Walter Liew's attorneys
7 draft an answer. There is no evidence Mr. Maegerle ever spoke
8 to an attorney for USAPTI or Walter Liew. Nor did anyone
9 testify that defense lawyers relied on Mr. Maegerle's
10 statements.

11 Again, the attorneys for USAPTI were not called to testify
12 for the government. There's lack of evidence, reasonable
13 doubt.

14 The Court has instructed you that an element of the crime
15 of obstruction of justice that the government must prove is
16 that Mr. Maegerle obstructed, influenced or impeded an official
17 proceeding. Where is that evidence? Where is that witness?
18 Where is he? Didn't happen.

19 The government argues that Mr. Maegerle was going to
20 respond to -- this is a big -- they've made a big deal of this:
21 Mr. Maegerle was going to respond to Mr. Liew's request for
22 comments on the summons that Mr. Liew received in regards to
23 DuPont's civil suit by a different email, and that somehow that
24 shows Mr. Maegerle had a bad intent.

25 However, read the email. It's Exhibit 678. What you'll

1 see is that Liew sent an email to Maegerle. He sends it from
2 his personal Yahoo! email account. Mr. Liew sends it on his
3 personal email account to Mr. Maegerle's personal email
4 account. And Mr. Maegerle says, I'm going to respond on your
5 personal email account.

6 Remember, it's about a civil lawsuit. And so rather than
7 send it to the corporate, where someone else may read it, you
8 know, what you do when you're in the middle of a lawsuit, you
9 don't want employees to know what's going on. How is that bad
10 intent? That shows you how far the government is reaching in
11 this case.

12 So Maegerle -- it's clear that that's no evidence of
13 anything, no less intent.

14 The natural response -- the government further argues that
15 Exhibit 678, in April 2011, Maegerle states that no Kuan Yin
16 design information has ever been obtained for the current
17 design.

18 First of all, we do not know what current design he's
19 referring to. As you know, USAPTI was working on several
20 projects. But you should remember, this is important, because
21 they show you an email before that, way before that, that talks
22 about Kuan Yin or Taiwan. But remember the evidence shows that
23 the Kuan Yin plant that DuPont eventually designed was
24 different, significantly different from anything that was
25 referenced in the Basic Data book or that when Mr. Maegerle was

1 at DuPont.

2 As we know from the testimony of Mr. Olson, who actually
3 ran the Kuan Yin plant, that the plant that was designed and
4 was -- and built after Mr. Maegerle left DuPont was
5 significantly different.

6 The plant that was eventually designed and completed about
7 1994 was a hundred -- according to Mr. Olson, DuPont's guy who
8 ran the plant, was 160,000 to 200 tons. That's a far cry from
9 the 60,000 plant referenced in the Basic Data Document.

10 You will see that Mr. Maegerle later expresses this
11 position in Exhibit 679, again, an email where he's responding
12 to the civil case. He says he doesn't know how big it is but
13 he thinks the Kuan Yin plant is 90,000. And he says call that
14 a large plant. That's -- and he goes on to talk about a
15 60,000-ton plant.

16 So he's looking -- he's talking about the plant that was
17 actually built. I think that's a reasonable, actual thing.
18 They didn't have anything about what was built.

19 He goes on to tell him that DuPont compromised its
20 technology with the sell of the Ashtabula plant to
21 Sherwin-Williams, and he restates his place. He again says, I
22 did not use any DuPont trade secrets.

23 And he says that DuPont's, really, trade secret and its
24 competitive advantage is not its technology but its operating
25 experience of its employees.

1 We're going to show -- I'm going to show you there was
2 testimony that backs up all This. He talks about Kuan Yin and
3 Jinzhou. What's he hiding when he refers to those two?

4 Look at Exhibit 681. He says, I've looked at the
5 complaint. DuPont doesn't state in the complaint any specific
6 trade secret. And then he goes on and gives example of DuPont
7 TiO2 in the public domain.

8 All goes to intent. All goes to intent.

9 If anyone should know if DuPont TiO2 technology was
10 compromised by DuPont, by Sherwin-Williams contract, or is in
11 the public domain, it is Mr. Maegerle. He built the Ashtabula
12 plant and, as we know is an expert, according to DuPont, on
13 what is and was not a trade secret. And I'll show that to you
14 later. Further, he worked at every DuPont plant and,
15 therefore, he knew each plant.

16 Not an obstructing justice. Mr. Maegerle tells Mr. Liew
17 what he thinks of the issues. And, again, as I told you, he
18 tells him, list me as the Ashtabula expert, and tell the Court
19 what he requires.

20 He finally states -- Mr. Maegerle further states he's
21 simply following advice when he was involved in a case with
22 Gaylord Chemical. We know he was involved with Gaylord
23 Chemical. And answer only the question that is asked. He's
24 not hiding anything. He's giving advice.

25 He did not have the intent to obstruct justice. He was

1 not obstructing justice. More than willing to identify
2 himself.

3 Let's talk about the burden of proof in this case.
4 Mr. Maegerle has no burden. He doesn't have to prove anything.
5 Though we think we've proved some things, which we'll talk
6 about.

7 Mr. Maegerle, as the Court has instructed you, is presumed
8 innocent. He's cloaked with innocence. He has no obligation
9 to testify. And that he didn't testify cannot be considered by
10 you against him. He has no obligation to produce any evidence,
11 call any witness, nor to prove his innocence.

12 The burden is always on the government. It never shifts.
13 And they have to prove each and every element of every charge
14 by its very heavy burden beyond a reasonable doubt.

15 Now, the Court gave -- explained a little bit what the
16 standard of proof that the government must meet. The Court
17 instructed you that a reasonable doubt is the kind of doubt
18 that makes you hesitate to act in a matter of most important
19 decisions in your life.

20 Let me ask you, if you went to a doctor and the doctor
21 told you you needed an operation, then you went to a second
22 doctor and he told you didn't need an operation, would that
23 cause you to hesitate about whether or not you're going to have
24 an operation? I would think so.

25 You heard the testimony of an expert in this case,

1 Mr. Paul Cooper. Did not his testimony alone raise many
2 reasonable doubts?

3 Now, Mr. Axelrod, he went after Mr. Cooper both on the
4 stand and in his opening. He went after him hard because he
5 knew he had been hurt by Mr. Cooper. And he didn't like
6 Mr. Cooper's answers, the answers he got from Mr. Cooper. The
7 answers did not confirm the government's theory. The answers
8 provided reasonable doubt.

9 Later I'm going to compare Mr. Cooper with the
10 government's experts. And after doing so, I think you're going
11 to see that Mr. Cooper was the most credible witness here, and
12 most reliable witness.

13 I should also remind you that a reasonable doubt not only
14 comes from evidence but lack of evidence. I would submit
15 there's many, many reasonable doubts in this case, on both.

16 Let's talk about the conspiracy charge. Mr. Maegerle is
17 charged with the conspiracy to steal alleged DuPont trade
18 secrets. The Court has instructed you that the government must
19 prove, as he said, beyond a reasonable doubt, that Mr. Maegerle
20 agreed with Mr. Liew and USAPTI to do something unlawful, to do
21 something unlawful. In other words, do something that the law
22 forbids.

23 The government must prove beyond a reasonable doubt that
24 Mr. Maegerle had an agreement with Mr. Liew to commit the
25 crime. Mr. Maegerle had to knowingly and willfully agree to

1 participate in an unlawful plan. No evidence of that.

2 I submit the evidence in this case does not support the
3 government's conspiracy charge, its substantive charge, or
4 aiding and abetting, no less evidence beyond a reasonable
5 doubt.

6 You've heard consistent evidence of what Mr. Maegerle
7 thought. And with his background and his experience, that's a
8 reasonable doubt.

9 Mr. Maegerle -- intent is the key issue in this case. Did
10 the government prove beyond a reasonable doubt that
11 Mr. Maegerle intended to violate the law? Did the government
12 prove beyond a reasonable doubt that Maegerle intended to steal
13 DuPont's trade secrets?

14 Did the government prove beyond a reasonable doubt that
15 Mr. Maegerle had the intent to enter into an unlawful plan?
16 Did the government prove Mr. Maegerle intended to harm DuPont?

17 Those are some of the key issues you must decide in this
18 case. Not only did the government not prove Mr. Maegerle's
19 intent, but the evidence, common sense, as I'll show you,
20 showed that he had no intent to violate the law; that he did
21 not believe that he was stealing any alleged trade secret of
22 DuPont; that he didn't enter into any unlawful plan.

23 As the Court instructed you, this is very important,
24 Mr. Maegerle's guilt or innocence depends on what he believed
25 the circumstances to be, not what they actually were. What he

1 believed. Doesn't matter what they were. It's what he
2 believed.

3 You saw the evidence in this case what he believed.
4 You'll see more. I'll go through it.

5 I submit that the evidence that the government didn't
6 prove beyond a reasonable doubt Mr. Maegerle actually stole the
7 secrets nor that he was involved in a conspiracy.

8 The evidence shows Mr. Maegerle believed that DuPont's
9 TiO2 process was known to its competitors because of the sale
10 of Ashtabula and Sherwin-Williams. Mr. Maegerle believed
11 whatever information that he gave to USAPTI and Mr. Liew was
12 not a trade secret. He believed that it was in the public
13 domain.

14 And, again, the government has to prove another element,
15 that Mr. Maegerle willfully and knowingly entered into the
16 agreement with Mr. Liew and USAPTI to commit crimes charged in
17 the indictment.

18 I'm going to review much of the evidence with you, but
19 first I want to talk about trade secrets and what's a trade
20 secret and what's not a trade secret, because I don't think you
21 got much of that from the stand.

22 To be a trade secret the information has to be secret.
23 The Court has instructed you that, one, the owner of the secret
24 has to have taken reasonable measures to keep such information
25 secret. And the secret must have economic value from not being

1 known to or being readily ascertainable by the public.

2 I would submit the government has not met its burden of a
3 reasonable doubt on any of the above evidence.

4 First, let's talk about reasonable steps to keep its TiO2
5 process secret.

6 The evidence is undisputed, I submit, that DuPont lost
7 control of its TiO2 technology when it sold it to
8 Sherwin-Williams.

9 Read, read Exhibit 900. That is the 1967 contract between
10 Sherwin-Williams and DuPont for the Ashtabula, Ohio plant that
11 DuPont built. Mr. Maegerle was in charge of that, was the lead
12 engineer. And it's all in the records.

13 In exchange, this is -- in exchange for Sherwin-Williams
14 paying a fee to DuPont for ten years, DuPont not only turned
15 over its TiO2 technology to Sherwin-Williams, DuPont gave
16 Sherwin-Williams all the following. Listen to this. DuPont
17 released its patents concerning its TiO2 process. DuPont gave
18 its flow sheets for the manufacture of TiO2. DuPont gave up
19 all confidential information concerning its TiO2 process.

20 Sherwin-Williams had the right to use the DuPont TiO2
21 process at other plants. DuPont had to design and build the
22 Ashtabula plant with DuPont TiO2 technology and process.
23 DuPont provided Sherwin-Williams with eight complete sets of
24 specifications and drawings used by DuPont to design and build
25 the Ashtabula plant and the TiO2 processes and equipment.

1 DuPont gave up its operational manuals. DuPont gave up
2 its engineering standards.

3 DuPont had to train Sherwin-Williams personnel how to
4 operate and maintain a TiO₂ plant. And you know where the
5 training had to take place? In DuPont's existing plants.

6 DuPont had to provide experienced DuPont personnel to
7 start up and run the Ashtabula plant.

8 The evidence shows, and there's more evidence to support
9 it, and I'll go through it later, that that contract shows that
10 not only did DuPont give up control of its TiO₂ process and any
11 alleged trade secrets therein, but in effect it gave up
12 ownership interest. It lost control of that process after
13 that -- after a 15-year period.

14 You have to have -- you have to own information to have
15 exclusive control over it. To be a trade secret it has to be a
16 secret. And we're going to talk about that in a few minutes.

17 In 1982, as I told you, around 1982, it may be a few years
18 afterwards, DuPont lost any and all control over its TiO₂
19 technology.

20 Sherwin-Williams could and did do what it wanted with TiO₂
21 technology. And I'm going to -- remember my cross-examination
22 of DuPont executive Dan Dayton, who testified in this case. He
23 admitted DuPont transferred its TiO₂ technology to
24 Sherwin-Williams.

25 Sherwin-Williams sold the Ashtabula plant and TiO₂

1 technology to SCM. SCM took DuPont's TiO₂ technology and built
2 a TiO₂ plant in Baltimore, Maryland.

3 Then SCM spun off the TiO₂ technology and formed a new
4 company, Millennium, which used DuPont technology to build
5 plants in England and Australia. This is DuPont's guy.

6 There was also a company called Lidell, I believe he said,
7 that owned Ashtabula plant and DuPont's technology at one time.

8 Millennium was bought by Cristal, which now owns the TiO₂
9 technology. And he testified he did not know how many other
10 plants were using DuPont's TiO₂ technology.

11 Now, so DuPont lost control of its technology; it lost
12 control of its secret.

13 I stand here and tell all you people, "This is my secret."
14 Do I control it anymore? Is it really a secret? And I have to
15 depend on you to hold it? No way.

16 But there's other evidence that we'll go into, but the
17 Government realized this and they then tried, "How do we combat
18 that DuPont lost its -- it gave up -- gave away its TiO
19 technology?"

20 And, so, what do they do? It's an undisputable fact that
21 they try to now build a barrier behind it. And they called
22 Mr. Livingston, and he's from Cristal, a company that now owns
23 DuPont's TiO technology, and they put him on direct. But you
24 remember my cross? Mr. Livingston admitted he did not know
25 what happened to the TiO technology from 1974 until 2000 when

1 he joined Cristal.

2 But, more importantly, he admitted that Cristal owned
3 DuPont's TiO technology and could do what it wanted with that
4 technology. I asked him and that's what he said. He admitted
5 DuPont had no control over its TiO technology since 19- -- his
6 words -- 1982.

7 Now, Mr. Livingston admitted that Cristal could sell
8 DuPont TiO technology or even publish it in the newspaper.
9 Now, the Government came back, and you probably went, "What's
10 Mr. Froelich doing? It's silly to say maybe they would publish
11 it in the newspaper."

12 But do you remember Mr. -- again, remember, go back to
13 Mr. Dayton of DuPont? He testified that he learned about
14 TiO -- tioxides [sic], I believe it is, TiO technology, because
15 it published its TiO technology in a magazine in Canada.

16 But the point of it is that DuPont can't control what
17 Cristal does with the technology. It can go out tomorrow and
18 take out a full-page ad. There's nothing DuPont can do about
19 that.

20 It's beyond -- it's also beyond dispute that Mr. Maegerle
21 knew what technology was in the Ashtabula plant because he
22 built it. He also knew that the plant had been sold to SCM.
23 He's told in numerous papers that, and he was a member of
24 DuPont, and that other companies had it. It was one of the
25 bases, and he's expressed it numerous times, on his belief that

1 DuPont's TiO technology was no longer a secret.

2 Again, I submit to you your secret is not a secret when
3 someone else controls it. Do you really own something that
4 someone else controls?

5 Remember, how many plants were built, do you think, or do
6 we even know, with TiO technology by its competitors? Look at
7 them all over. How many people, particularly engineers, built,
8 consulted, or worked on those plants and have access to
9 DuPont's TiO technology?

10 Now, Mr. Gibney, the Government's expert, admitted on
11 cross-examination -- he was the Government's expert -- that
12 DuPont lost control of its TiO technology when they sold it to
13 Sherwin-Williams.

14 I might point out when we were talking about experts, we
15 started -- the Government jumped on Mr. Cooper, and I started
16 talking about Mr. Cooper. I might point out that while
17 Mr. Gibney knew this fact, his expertise should be really
18 questioned by you. You might remember, and I hope you do,
19 Mr. Gibney claimed on direct examination that Sherwin-Williams
20 built the chlorinator in the Ashtabula plant and not DuPont.

21 When I crossed him, he changed his mind. He said, no, it
22 wasn't the chlorinator. It was the oxidation or the oxidizer
23 or the oxidation unit. That's not correct. That's not
24 correct. Other DuPont witnesses have told you and the contract
25 says that they built the whole plant. They built the whole

1 TiO2 process.

2 So remember the testimony of Mr. Cooper. He's certainly
3 more experienced than Mr. Gibney. He was not even --
4 Mr. Gibney was not even an engineer, but basically a salesman
5 and later an executive. Here's the kind of expert he was.

6 When I crossed him, he admitted he could not explain flow
7 sheets: (reading)

8 "All I really know is the pieces of equipment and how
9 they fit together."

10 "All I really know is the pieces of equipment and how
11 they fit together."

12 That's some expert. That's someone I believe over
13 Mr. Cooper.

14 Mr. Cooper, on the other hand, was an experienced
15 engineer. He's the only one who testified who actually worked
16 in the Ashtabula plant and been in the Ashtabula plant.
17 Mr. Cooper testified not only can you but he actually has
18 gotten the dimensions of DuPont's flue ponds using
19 Google Earth, particularly Edgemoor plant.

20 Now, Mr. Axelrod got a little, and I can explain -- I
21 understand why he was a little excited about Mr. Cooper,
22 because he confronted Mr. Cooper about that and Mr. Cooper
23 said -- he said, you know -- he said to Mr. Cooper, "You're
24 trying to tell me that you think you can get the dimensions off
25 Google Earth?"

1 What was Mr. Cooper's response? "Not only can I, I did."
2 And he explained in 20 hours -- it took him 20 hours, but he
3 measured it out, even diameters of the plant -- diameters of
4 the pipes. What kind of trade secrets are that?

5 He also testified -- Mr. Cooper testified from patent
6 information, which is public information, you can determine
7 flue ponds about any DuPont facility.

8 So then Mr. Cooper testified that Jinzhou plant, which had
9 been built and operating before Mr. Maegerle retired from
10 DuPont, has a flue pond with square elbows. Remember, they
11 were making a big deal about those elbows they showed? Those
12 have been in existence a long time.

13 And what does that do to the picture that Mr. Dayton
14 identified? Do you remember the pictures that Mr. Maegerle
15 has. They haven't shown you who took them, when they were
16 taken, or what plants they were; nor have they gone through
17 each of them and told you, "Boy, this is a trade secret. This
18 is really important."

19 They showed you a couple of them, a flue pond, an empty
20 flue pond. Come on. I even said to I think it was Chang, "All
21 that is is a retaining wall."

22 He said, "Yeah. I can do that basically blindfolded."

23 And then you want to talk about the pictures? Mr. Dayton
24 testified that -- and they've made a big deal out of that
25 Mr. Dayton testified and Mr. Cooper. Mr. Cooper says you can

1 get more information than Mr. Dayton said out of the picture
2 from the chlorinator.

3 But you look at that picture of a chlorinator, that
4 chlorinator, and they say, "That's not a trade secret. DuPont
5 wasn't exposing anything." Look at the other -- look at the
6 pictures Mr. Maegerle had at his house. You tell me if that
7 picture of that chlorinator isn't a lot more detailed, a lot
8 more important than anything Mr. Maegerle has with the pictures
9 of boats going by, and things like that.

10 **THE COURT:** Mr. Froelich, is this a good time to take
11 a stretch break?

12 **MR. FROELICH:** Yes, Your Honor.

13 **THE COURT:** Let's get up and stretch.

14 (Pause in proceedings.)

15 **THE COURT:** All right. Please be seated.

16 You may continue, Mr. Froelich.

17 **MR. FROELICH:** Thank you, Your Honor.

18 Mr. Cooper also testified and gave us more reasonable
19 doubts. He testified that SCM had made public disclosures of
20 DuPont's TiO2 technology. He testified eight different
21 Ashtabula flow process diagrams in DuPont's TiO2 process were
22 on the Internet.

23 Remember, the flow diagrams are not in the Basic Data
24 Book -- the document -- excuse me -- the Basic Data Document,
25 but only referenced in the Basic Data Document. It's one of

1 the documents engineers have to get.

2 Mr. Cooper testified the particular operating process of
3 the Ashtabula plant can be found on the Internet, which, again,
4 makes it public -- the processes public. Cooper said that he
5 saw this information on the Internet as early as 1989.

6 And that's a good date, an important date, because the
7 confidentiality agreement runs for 15 years. Now, the
8 confidentiality agreement is dated in 19- -- that
9 Sherwin-Williams had, that was in 1980 -- 1967; and you add 15
10 years, it's 1982. But there's a provision in it that says it
11 really doesn't start until the first batch of TiO₂ is produced.
12 So give it a few years, and maybe '85, '86, it runs '89 is what
13 he had on the Internet.

14 He also testified that patents for DuPont's oxidation
15 reactor at its Antioch plant were publicly available off the
16 DuPont patent.

17 He was asked by the Government, challenged by the
18 Government, "Give me the output of each DuPont plant today."
19 And he gave it to him. Mr. Cooper testified that there's a
20 recognized expert on TiO₂ that has written a manual on TiO₂
21 technology.

22 Based on his testimony alone and the sale of the TiO₂ --
23 of its TiO₂ technology to Sherwin-Williams -- and there's other
24 evidence that I'll show you -- it's clear it's not a trade
25 secret, DuPont's TiO₂ at least, and most of it or all of it is

1 publicly or reasonably acceptable or obtainable.

2 The Government's expert, Mr. Gibney again, he testified,
3 when I cross-examined him, that there are consulting
4 companies -- and I hope you remember this -- with ex-DuPont
5 employees who provide information to the TiO industry and
6 DuPont's competitors. Some of the information includes the
7 tons per hour each DuPont plant produces, the raw materials
8 DuPont uses in each plant, what it costs DuPont to manufacture
9 a ton of TiO₂, how much chlorine it costs that DuPont uses per
10 ton.

11 Gibney testified that these consulting companies use a --
12 and you've heard me mispronounce a lot of names, I'm going to
13 kill this one -- stoichiometric model in their computers which,
14 with the above information, allows them to tell TiO companies
15 the size of DuPont's chlorinator and oxidation.

16 Now, that's what he testified to. Now, they jumped on him
17 on redirect, but that's what he testified to when I
18 cross-examined him.

19 Gibney also testified that he went to Google Earth and
20 determined the size of DuPont's DeLisle plant's flue pond, and
21 it had serpentine pipes and he actually measured their lengths.

22 Further, he testified you can look at Google Earth and see
23 that DuPont's DeLisle plant, for example, has two oxidation
24 units.

25 He testified that DuPont has separate flue ponds for each

1 lines of the DeLisle plant, and that they could be measured off
2 Google Earth. And he had measured DeLisle piping off
3 Google Earth, though he said he couldn't get the -- he could
4 measure lengths and things likes that, but he couldn't get
5 the -- he said the width of the pipe. Mr. Olson said -- I
6 mean, excuse me, Mr. Cooper said now he can do that.

7 One important thing that Mr. Olson testified to. If you
8 remember, Mr. Olson was pretty high up. He was a DuPont
9 vice president. He testified that when DuPont's going to build
10 a new TiO2 plant, it publicizes the cost of the plant and the
11 number of employees who work at the plant so that the
12 information is in the public domain. It's not a trade secret.
13 It's in the public domain.

14 The Government has showed you some documents about
15 DuPont's -- internal DuPont documents about confidentiality,
16 and they've relied on this to boost their confidentiality
17 argument. And I say to you, when you read them real close,
18 they really don't help the Government.

19 Exhibit 843 is a 1985 memo entitled "Design Division How,"
20 and there's no evidence that Mr. Maegerle ever saw it. But I'm
21 going to go -- hold one second on those.

22 But the page 1 of the memo states that DuPont managers
23 have the ability and have the authority to determine what
24 information DuPont's contractors and contract employees
25 receive. The memo provides that DuPont project managers, like

1 Mr. Maegerle, and supervisors can give any and all documents
2 containing DuPont's TiO technology to contractors and
3 consultants with the only provision being they keep a record of
4 what documents they provide to the contractors and employees.

5 Now, I would like to show, if you can, page 2.

6 And this is the kind of security that's in that memo. The
7 memo provides: (reading)

8 "A contract employee is permitted to work on a DuPont
9 site," that's a plant, "only in the company of a DuPont
10 Design Division employee or by agreement (preferably in
11 writing)."

12 You don't even need to have an agreement in writing or any
13 agreement. As long as -- you can bring a consultant. You can
14 walk him around the plant. You can do whatever you want
15 according to this memo that's a DuPont memo. According to
16 this, you can read this. It's not something I made up. All
17 they had to do was have another employee with them. In other
18 words, there's no requirement for an agreement, no less a
19 written agreement. What kind of protection is that? How is
20 that for confidentiality?

21 The memo has a list of security classifications; however,
22 when I went through it, I noticed, and you might want to take a
23 look, one of the classifications, A, it's missing from the
24 document. There's only a handwritten note on it. Why is that
25 portion not there?

1 Let me read -- you see, there's a letter attached to that
2 dated February 18th, 1985, from Mr. Clark.

3 Can we pull that up, please? And can we blow up what it
4 says, the first paragraph, please?

5 What it says is: Attached is a letter from Charles
6 Baker [sic] describing the fact that all, all, design is now
7 being done by contract employees. This will result in
8 substantially increased infusion of our chloride TiO technology
9 into the mainstream of chemical engineering and this is not
10 acceptable.

11 It's already in the mainstream it says. This is a DuPont
12 document. I'm not making this up. It's already in the
13 mainstream. Now it's going to be an increase. That's what
14 Mr. Cooper's testimony is.

15 And you know what? Just -- I'm going to get away from my
16 notes for a minute.

17 Do you remember the arguments that the Government made to
18 you that: Why would you hire consultants? You had the ability
19 to do it all yourself. Why would they hire Mr. Wu at USAPTI?
20 Why would any company do that? If you have all the experience,
21 why do you need consultants to design something?

22 Consultants are doing all -- not this part (indicating);
23 not this part (indicating) -- all of the design for DuPont.
24 What does that tell you? DuPont even can't design its own
25 plants, and it's got trade secrets? Come on. Give me a break.

1 If you read through those documents, it shows that, like,
2 1987-1988 they're saying we don't have -- they've testified
3 about all this stuff -- they don't even have educational
4 programs, and we recommend that we start educational programs
5 for our employees. Why do you do that? Because you know
6 things are going out the door.

7 You know, and they -- you know, you have to wonder why the
8 Government didn't bring in some of these employees to say,
9 "Hey, we've got these contracts. We got this." Why not?
10 Reasonable doubt.

11 DuPont's own documents show that this technology was
12 publicly available. It was in the mainstream. The horse, as
13 counsel said, the horse was out of the barn. Tough to put one
14 back in. That's what the Government's been trying to do.

15 Remember the testimony of Paul Cooper, the one they jumped
16 on. He didn't know what he was talking about. DuPont's
17 technology was easily accessible in the public and had been out
18 in the mainstream. DuPont document. DuPont document.

19 Let's talk about contractors and consultants again for a
20 minute. We've talked about the internal documents that I've
21 shown you, and that DuPont contractors and consultants had
22 access and ability to have all DuPont's TiO2 technology because
23 we know they're doing all the work. They're designing all the
24 plants. DuPont doesn't do that anymore. DuPont's out of that
25 business.

1 Mr. Dayton, the DuPont executive, testified DuPont used
2 contractors and consultants on their projects because, as those
3 memos say, DuPont cut back on its Engineering Department in the
4 1980s. It didn't only cut back, it's gone basically.

5 DuPont testified when consultants and contractors finished
6 their work with DuPont, they went to work for other TiO₂
7 companies. That's what he testified.

8 Mr. Gibney testified that noncontracting employees also do
9 TiO₂ work, and they had no confidentiality agreements. Gibney,
10 expert.

11 I hope you remember my cross-examination of Mr. Dayton
12 because what he said was: Confidentiality agreements with
13 contractors and -- DuPont's confidentiality agreements with
14 contractors and consultants have expiration dates on them.
15 Expiration dates. That means there's (indicating).

16 That's what Maegerle has been consistently saying;
17 contractors and consultants have access to all of DuPont's TiO
18 technology and they had five-year agreements. That's what he's
19 been saying. You've seen it. He's told everybody that.

20 Mr. Dayton testified that he knew Dan McIntosh and that
21 McIntosh was a consulting engineer for DuPont in the TiO₂
22 process, and McIntosh invented the reserve jet storage used by
23 DuPont in the TiO₂ process.

24 The Government never brought in any agreement from
25 McIntosh with DuPont. Why not? Why not? Why didn't they

1 bring in Mr. McIntosh? Do you want reasonable doubt?

2 Reasonable doubt?

3 And you want to talk -- I want to go back and talk about
4 experts for a minute. Mr. Dayton, you want to talk about his
5 credibility. Mr. Dayton said that the only time DuPont has
6 ever had an agreement with a company -- given away or talked
7 about its TiO2 technology -- it's never had partners. It never
8 wanted to do any of that. It would never do that. And that
9 the technology, they just didn't do partners. Well, you
10 remember my cross-examination of him? "What about the Altamira
11 plant?"

12 "Oh, well, that was when we had -- that's when it was a
13 sulfate plant, and we got rid of that partner."

14 I said, "Don't you have a partner in the TiO plant?"

15 "Well, no."

16 I said, "Didn't you have a partner in the TiO plant?"

17 "Well, yes, we did in the TiO plant -- TiO2 plant, but he
18 went bankrupt and the bank took over that partnership." That's
19 what he said after denying they didn't have partners after
20 cross-examination. So that gives you a little bit about -- you
21 want to talk about credibility, you want to talk about experts.

22 I also think that we've shown that the evidence shows that
23 it's not the design of the TiO2 plant that gives DuPont the
24 advantage over its competitors. DuPont's trade secret
25 competitive advantage is, it uses low-grade ore. Mr. Gibney

1 testified DuPont's advantage was it was low-grade ore which
2 gave it a lower cost than its competitors.

3 Mr. Dayton again testified low-grade ore was critical to
4 the DuPont process.

5 Agent Ho testified DuPont told her its advantage over its
6 competitors -- remember I crossed her about it -- was it could
7 use low-grade ore.

8 Mr. Olson, DuPont's vice president, testified the
9 advantage was -- DuPont's advantage was it could use low-grade
10 ore.

11 No Government witness testified to any particular portion
12 of DuPont's TiO₂ process technology that gave it an advantage
13 over its competitors. None. So they've come out and they've
14 thrown this big ball at you.

15 Mr. Cooper testified, again, the competitive advantage was
16 that it had experienced personnel to operate and maintain its
17 plants. Mr. Olson also testified to this plant; and
18 Mr. Maegerle tells Mr. Liew that when that -- on his thoughts
19 on the civil Complaint filed by DuPont.

20 Let's talk about the Basic Data Document, Exhibit 161.
21 The Government charges that the entire document is an alleged
22 trade secret. The Government has to prove that beyond a
23 reasonable doubt, that Mr. Maegerle believed that the entire
24 Basic Document is a trade secret.

25 I submit the Government charged that the entire Basic

1 Document as a whole, you know, they can't prove that. They
2 haven't proved it, and I'll show you that they haven't proved
3 it.

4 First of all, we've never denied -- I've never denied --
5 and I've told you from the opening Mr. Maegerle had notes from
6 that. Mr. Maegerle did not possess the entire document, and
7 there's several problems with the Government's position.
8 Besides, the evidence doesn't support it.

9 What do we know from the Basic Document? First of all, as
10 the Government has admitted, this is Mr. Maegerle's document
11 (indicating). They didn't find it in his house. DuPont
12 produced it. Look at it. It's 500 some odd pages.

13 So the Government, I guess, has fallen back on that my
14 client, Mr. Maegerle, in 1985 said, "Ooh, I'm going to be
15 involved in a conspiracy. I'm going to copy 500 pages and take
16 it home." Come on. It doesn't make sense. You've got common
17 sense.

18 Now, what do we know? We know it does not state on its
19 face that it's a trade secret. Okay? DuPont didn't stamp it
20 "Trade Secret." So that -- we know that, first of all.

21 We know that only the first two pages have "Confidential"
22 on it. Nothing else is stamped "Confidential." Nothing. Now,
23 there is a statement, I agree, that says it's confidential.

24 What it does state, I think it's page 35, that there are
25 trade secrets within this document. So that statement says, in

1 effect, this whole thing is not a trade secret. Because it
2 says there were some trade secrets in it, that makes this whole
3 thing not a trade secret.

4 But, more importantly, there's not a stamp on any page
5 that says "Trade Secret," "Trade Secret," "Trade Secret." Not
6 one. Not one.

7 So how are you supposed to know what's a trade secret?
8 We're going to talk about that in a few minutes. It's a
9 preliminary document. It states that -- it states that on
10 every page for a plant to be built in Asia, initially Taiwan.
11 We know when the Basic Document was issued. The testimony is
12 and it says in the book. In October of 1985, the Kuan Yin site
13 was not even on DuPont's radar. It refers to two other sites,
14 and I got Mr. Dayton to admit that.

15 We know the Basic Document was numbered so DuPont would
16 know who had each Basic Document and they'd know what would
17 happen to each Basic Document. Why else would you number it?

18 Why did no one come in to testify that Maegerle never
19 turned in his numbered Basic Document when he retired from
20 DuPont? In fact, I showed you why. Right there (indicating).
21 He turned it in. How's that for reasonable doubt?

22 What else do we know? We know that DuPont's witnesses
23 have testified that critical information was not in a Basic
24 Document, Basic Data Document. Electrical diagrams aren't
25 there, equipment diagrams, flow sheets, design data sheets, to

1 name a few.

2 You can look at the document and see, as witnesses
3 testified, critical documents, some of which are referenced in
4 there, others are not; and an individual needs to go and say,
5 "Oh, I see B47214, and I have to go to the Engineering
6 Department or I have to go to the Design Department to get
7 that." We know because the document itself says it, and I got
8 Mr. Dayton to admit it, that this document contains no new
9 DuPont TiO technology. It says it and we got testimony on it.

10 We know that the Basic Document has no revisions; and, as
11 I said, it refers to a 60,000 plant -- 60,000-ton plant.

12 We know Mr. Maegerle left the project before the Kuan Yin
13 plant was built. He went to DeLisle, Mississippi. Exhibit 722
14 will prove that. Mr. Dayton testified to that. We know that
15 he went to the Korea project that was never built, and
16 Mr. Dayton testified to that.

17 We know that Maegerle retired in 1991 before the Kuan Yin
18 plant was built. Mr. Olson testified the plant did not start
19 operating until about 1994.

20 We know that the plant DuPont built in Kuan Yin was not a
21 DuPont plant from the Basic Document. I've already told you
22 Mr. Olson, the vice president, said that, according to him, the
23 plant that they eventually built was 160,000 tons to
24 200,000-ton, not the 60,000-ton plant.

25 We know that the Basic Document lists two pages of

1 consultants that they would use to build the plant. Remember,
2 they're not building their plants.

3 We know that the Basic Data Document contains a lot of
4 publicly available information. I got Mr. Dayton to admit
5 that, and I showed him some things about the aluminum pellets,
6 the weight of aluminum pellets. And he said, yeah. And they
7 even reference a chlorine pamphlet document. Remember I went
8 through that with him?

9 We know that the plant -- the Data Document, contains
10 numerous references to the Antioch plant. I've already said
11 that it doesn't state anywhere in the document what's a trade
12 secret. We know that the information was from 1985 or earlier.

13 And we know that it was basically a reference document
14 that you looked at, and then you went and got information from
15 that.

16 I want to remind you of a few things about Mr. Dayton's
17 testimony. He admitted that just because something was stamped
18 "Confidential" and not marked "Trade Secret," it did not make
19 it a trade secret.

20 Look at Exhibit 722 seized from Maegerle's home, and
21 you'll see that DuPont stamped almost every document
22 "Confidential," including letters to Mr. Maegerle.

23 Mr. Dayton testified that a trade secret was something so
24 important, it never had to be revealed to a competitor. Okay?
25 I'm going to show you everything's been revealed to a

1 competitor.

2 You should remember, and I'll go through it again,
3 Agent Ho's testimony, that DuPont told her that the Kuan Yin
4 plant was based on DuPont's Antioch plant. That's what DuPont
5 told her, that the Kuan Yin plant was based on the Antioch
6 plant. Antioch.

7 Mr. Dayton testified that DuPont's Antioch and Ashtabula
8 plants were the same plants, and we know that DuPont's
9 competitors had all that TiO₂ technology.

10 Look at DuPont's contract with Sherwin-Williams. It
11 revealed everything, not only how you build the plant but about
12 all their processes, the standards, and everything else, how to
13 run and maintain a plant.

14 Mr. Dayton never testified as to what TiO technology was
15 revealed in the Basic Data Document that was different than
16 DuPont's TiO technology today.

17 He admitted that critical DuPont documents and information
18 were not in the Basic Data Document. He admitted there was no
19 new technology in the document, and there was a lot of public.

20 Now, this is what really we got to it. Mr. Dayton
21 testified you could not build a plant based just from the Basic
22 Data Document. Again he referred -- he said that it was a
23 reference document and the engineers -- to show engineers where
24 critical and essential documents were available at DuPont's
25 Design Center and Engineering Department.

1 This is what -- you want reasonable doubt? Importantly,
2 Mr. Dayton testified that in 1992, he had to put together a
3 committee -- do you remember this? I got him to -- that
4 revised how DuPont developed its Basic Data Document. He
5 established guidelines. Why? Do you remember why, what he
6 said?

7 The last three DuPont plants that were built using
8 documents that were even -- that were referenced -- that you
9 got that were referenced in the Basic Data Document that you
10 had to go to work -- that you had to go to get did not work.
11 He said the pieces did not fit.

12 How can there be a trade secret in a Basic Data Document
13 when the documents referenced therein but are not in the
14 documents do not even allow DuPont to build a plant where the
15 pieces would fit? Maybe that's why they don't have a Design
16 Department anymore. Maybe that's why they have their
17 consultants.

18 How can anyone know for sure what part of this is a trade
19 secret when it's not stamped?

20 I want to very briefly talk about they showed you that
21 chart, Mr. Dayton went through it, Exhibit 161. A lot of it
22 were duplications, and a lot of it -- you'll see that
23 approximately 10 of them have no reference to Kuan Yin or
24 Taiwan, but Mr. DuPont -- Mr. Dayton said the information was
25 consistent with what was in 161.

1 Well, you know my client is experienced and everything
2 else. At DuPont he built all -- he was at all their plants.
3 He helped at all their plants. And remember Mr. Dayton said
4 that Mr. Maegerle could probably design much of a TiO plant for
5 himself.

6 We've never admitted -- we've never denied, I mean, that
7 he's had portions -- or had notes from those, but there's no
8 evidence that he copied an entire 500 pages; and I would say
9 that there's evidence that support that -- that supports he
10 didn't.

11 Look at Exhibit 63. And Maegerle in 2008 -- do we have
12 that? -- writes to Jack Sheehand, an ex-DuPont employee, and
13 states: I tried to design a China 3,000-ton -- 30,000-ton
14 oxidation reactor from memory. Enclosed is my first attempt.
15 And he asks Mr. Sheehand to review and comment on the design.

16 He's trying to do it from memory. If he has the Basic
17 Data Book that contains all these trade -- Basic Data Document
18 that contains all these trade secrets, why is he doing that?

19 Exhibit -- you can look at Exhibit 63, same type of thing.
20 He's indicating that he's using his memory.

21 Another thing about common sense. You've got this -- if
22 you've got this Basic Data Document, if you made the copies of
23 it and you're in this criminal conspiracy -- okay? -- why
24 aren't you just faxing or e-mailing? Why aren't you just
25 e-mailing the pages to Mr. Liew or USAPTI? Why are you working

1 and writing all this stuff and handwriting all this stuff? Why
2 would you be doing that? It would be easy.

3 I mean, he's a criminal guy. Criminal guy. Why not --
4 why not just say, "Stop calling me. Give me a lot of money and
5 let me bring this thing here and just drop it. Just send me my
6 check." I mean, it's common sense; right?

7 Look at Exhibit 46. That's -- we don't have to pull that
8 up, but that's -- I'm going to talk about it in a few minutes,
9 but Mr. Maegerle gave that to the FBI in his home; and it has
10 all -- I think there's 95 or 85 or 75 pages to it. There's two
11 references. There's a reference to Kuan Yin -- there's a
12 reference to Kuan Yin and there's a reference to Taiwan. But
13 he turns that over to the FBI. There's sketches, all kinds of
14 sketches.

15 Look at Exhibit 165. That's Maegerle's conceptual design
16 of the spray machine. Okay. And what does he -- how does he
17 do that? He communicates with a retired DuPont maintenance
18 supervisor.

19 That shows you two things. DuPont people are talking.
20 They don't think they're obligated. And are you going to talk
21 to DuPont people if you're in a criminal conspiracy? And if
22 you've got the Data Book, why are you calling someone to find
23 out what the data is?

24 You also heard that Mr. Maegerle didn't do all the
25 conceptual designs. For example, Mr. Zisko said that he was in

1 charge -- that he, Mr. Zisko, was in charge of chlorination on
2 the Jinzhou project and he wrote the specifications for the
3 equipment. He testified he had -- that the chloride-route
4 plant at Jinzhou had a chloride-route plant in China with
5 experienced engineers who had input on a design in a 30,000-ton
6 plant.

7 Why do you bother with Jinzhou if you have all this stuff?
8 Why would he do all the work? Why would he do all the work?
9 Because he didn't believe he was in any criminal enterprise.
10 He didn't think he was selling or stealing any trade secrets.

11 Also, you have to remember that he didn't hide to anybody.
12 Everybody you heard from that worked at USAPTI, he told
13 everybody he met, "I'm an ex-DuPont engineer with all the
14 experience, TiO2 experience." So why would he do that? Why
15 wouldn't he just hide in the shadows?

16 And the other thing is, if you will look at some of the
17 e-mails that had Taiwan and Kuan Yin on them, and he's sending
18 them to Chang -- I know I'm going to butcher his name, it began
19 with a B -- Brijesh Bhatnagar, I think it was, along those
20 lines, and Patel. Why are you sending them to USAPTI employees
21 and telling them it's Kuan Yin?

22 And, remember, by the time he starts -- Mr. Maegerle
23 starts working at USAPTI -- USAPTI -- USAPTI, it's about
24 1984-19- -- excuse me, 2004-2005. He's out of DuPont since
25 1991, 13, 14 -- 13, 14 years.

1 Let's just try to get through a little quicker, but the
2 evidence shows Maegerle did not believe he was providing trade
3 secrets. One, he was contacted, as I said, by Condux to be a
4 consultant. Condux business is, as everybody knew there and
5 everybody shows, hiring ex-DuPont experts. Neither Arbogast or
6 any other employees who were contracted -- contacted by Condux
7 had any hesitation about consulting on a TiO2 project.
8 Mr. Gibney told you that he knew about it, he knew about
9 Condux. Everyone -- as I told you, he told -- Mr. Maegerle
10 told everybody who he had worked for.

11 Experienced businessmen as Peter Zisko and Steve Amerine
12 stated. They had no hesitation with working with Mr. Maegerle.
13 Even though they knew he was an ex-employee, they asked him
14 questions about what he did at DuPont. And Mr. Zisko says
15 that, and he told you, that back in 2004 Mr. Maegerle said he
16 could consult and that he had even cleared it through a lawyer.

17 There's no -- you've got to remember he's saying these
18 things, and there's no civil suit, there's no federal
19 investigation. That's coming seven or eight years later.

20 Mr. Maegerle contacted numerous ex-DuPont employees and
21 told them he was working as a consultant designing a TiO2 plant
22 in China. Who does that if you're in a criminal conspiracy?

23 He asked DuPont employees for help, and if they wanted to
24 work for USAPTI. Look at Exhibit 741 that shows that
25 Mr. Maegerle recommended Jim Wheeler to USAPTI who is working

1 as a consultant on DuPont's Edgemoor plant. Why would you do
2 that if you're in a criminal conspiracy?

3 Look at Exhibit 63. He contacts Jack Sheehand about
4 working on a TiO₂ project.

5 Look at Exhibit 698. That's a letter from Mr. Pezone, the
6 former DuPont employee that Mr. Maegerle contacted about
7 working on a project. What's Mr. Pezone's reply? Not that, "I
8 have a lifetime agreement. I can't do this"; but he didn't
9 think it was ethical because after he had retired from DuPont,
10 he was working as a consultant on a new product.

11 Look at 779. That's an e-mail to Mr. Maegerle that
12 Mr. Liew had found a consultant engineer who was working in
13 Australia but had worked on the Kuan Yin plant for DuPont and
14 was willing to provide information. If the consultant was
15 bound by some agreement, why was he willing to do that?

16 Mr. Livingston, now, he had an ex-DuPont employee come to
17 him with DuPont information. Mr. Livingston said he wasn't --
18 he wouldn't take it, but it's another example of people from
19 DuPont out with information.

20 Remember, there are two other TiO experts working on the
21 project, Dan McIntosh and Tim Spitler.

22 And look at Exhibit 1004 again, that letter. Mr. Arbogast
23 says -- he writes to Mr. Marinak that he had contacted one
24 individual that could offer a great deal of assistance relative
25 to chloride process having spent most of his career in

1 technical work -- in technical work, operations, and management
2 at one of DuPont's manufacturing plants. Unfortunately, he
3 feels uncomfortable.

4 He doesn't say, "Unfortunately, I have an agreement that I
5 can't work." Unfortunately, he feels uncomfortable guiding a
6 competitor around the minefields of critical separations and
7 exotic materials. But he says -- at the end he says, "I may
8 try to contact him again, perhaps later if really needed."
9 Where is anybody saying, "Oh. Oh"?

10 So, you know, Maegerle contacts at least four other
11 individuals who worked for DuPont to discuss the TiO. He tells
12 everybody. Is that reasonable doubt? Does that sound like
13 everybody who was involved in a conspiracy?

14 USAPTI even advertised at one point that -- on the
15 Internet that it had ex-DuPont employees who were TiO experts.

16 I'm going to want to talk very quickly, I don't want to
17 spend too long, but there's --

18 **THE COURT:** Maybe before you do, this would be a good
19 time to break.

20 **MR. FROELICH:** It's actually a perfect time,
21 Your Honor. A great time.

22 **THE COURT:** All right. Thank you.

23 So, ladies and gentlemen, we're going to take our last
24 break. So remember we're going to, if we need to, 2:15. You
25 agreed to do that.

1 And we'll see you in 15 minutes. Keep in mind the Court's
2 instruction. Keep an open mind and don't discuss the case.

3 (Proceedings were heard out of the presence of the jury:)

4 **THE COURT:** How much more time do you have,
5 Mr. Froelich?

6 **MR. FROELICH:** I think I'll get through within a half
7 hour, Your Honor, I think.

8 **THE COURT:** Okay. Great. All right. 15 minutes.

9 (Recess taken at 11:42 a.m.)

10 (Proceedings resumed at 12:00 p.m.)

11 (Proceedings were heard out of the presence of the jury:)

12 **THE COURT:** Please bring the jury in.

13 (Proceedings were heard in the presence of the jury:)

14 **THE COURT:** Please be seated.

15 You may continue, Mr. Froelich.

16 **MR. FROELICH:** Thank you, Your Honor.

17 Just I wanted -- before I move on to another topic, I just
18 wanted to restate again, and I think I may have, that when
19 Agent Ho was on the stand, I asked her about what DuPont told
20 her its advantage was over its competitors, and she said it was
21 the use of low-grade ore.

22 You have to ask her why -- you have to ask yourself: When
23 we're talking about trade secrets, why didn't DuPont tell her
24 its competitive advantage was its superior TiO technology?
25 That's what the investigation is about.

1 The last two people I want to talk about, and I saved it
2 for last, is, first of all, Agent Pattillo. I did this because
3 I think that her testimony illustrates a lack of intent to
4 commit a crime and raises reasonable doubts by both the
5 evidence and lack of evidence; and contrary, I submit to you,
6 from what Mr. Axelrod argued to you, that my client lied and
7 that he was hiding and he was making up a story.

8 I think when we review what was said, not only on direct
9 examination but on cross-examination, you're going to find
10 totally -- the facts are totally different than what
11 Mr. Axelrod imparted to you.

12 If you remember, Agent Pattillo, a very nice woman,
13 testified on direct examination that eight to ten agents were
14 on the FBI search team that went to search Mr. Maegerle's
15 residence in Delaware in a cottage he owned across the street
16 from the residence.

17 Agent Pattillo is from Delaware. There was another agent
18 with her -- now you know from now I murder names --
19 Agent Koblitz, who is stationed here in the San Francisco area.
20 They went to Mr. Maegerle's house, according to her, knocked on
21 the door. Mr. Maegerle answers the door; and they tell
22 Mr. Maegerle they've got an ongoing investigation. She
23 couldn't remember exactly what she said. It was about theft of
24 trade secrets from DuPont, and they'd like to talk to him.
25 Maegerle doesn't shut the door. He didn't say no. Maegerle

1 says, "Come on in." He invites them in. And they talk,
2 according to her, Agent Pattillo testified they talk to
3 Mr. Maegerle for about an hour.

4 She says that -- she testified he worked for DuPont. He
5 told her that he worked for DuPont from 1960 to 1991. Do you
6 think Mr. Maegerle forgot when he started working at DuPont, or
7 do you think that maybe Agent Pattillo's memory wasn't correct?
8 We'll talk about her memory in a few minutes.

9 Mr. Maegerle talked about the last two major jobs he did
10 with DuPont; those jobs being DeLisle, Mississippi, and Korea
11 plant that was never built. That's what he tells her. And if
12 you look at the exhibits and testimony in this case, again,
13 he's correct.

14 Mr. Maegerle tells the agents that the majority of his
15 work at DuPont was TiO1 -- TiO2, and he talks about
16 Gaylord Chemical.

17 He talks about Kemira, a TiO2 company, and how he and
18 Oliver, an engineering firm in Atlanta where I'm from,
19 contacted him to consult on Kemira. And he tells them that he
20 talked about seeking approval from DuPont about Kemira, and
21 that he wrote a letter to Mr. Dakin. And the Government found
22 that letter eventually, and it's Exhibit 54. And I've already
23 mentioned something about that, and we're going to talk about
24 that in a little while.

25 Mr. Maegerle, he tells the agents that Mr. Dakin called

1 him and told him that DuPont had no objection to his consulting
2 on TiO₂, but would not put anything in writing. This is not
3 the first time Mr. Maegerle made that statement. As you know,
4 he replied to the Complaint, and he replied to Mr. Liew.

5 And the evidence shows that he also made that -- he was
6 making statements as early -- like that in 1997. I mean, no --
7 no civil suits, no federal investigation. You can go back to
8 1997.

9 Interesting is that if you look at a lot of the documents,
10 you see Mr. Dakin is on a lot of the DuPont documents. And I
11 didn't get a chance to cross-examine him here, because the
12 Government didn't call him.

13 Maegerle talked about Condux and how he met Walter Liew in
14 1997. He started a consulting relationship 1994 to 2011. He
15 said he consulted from 1997 to 1998 for USAPTI through Condux,
16 and then earned -- concerning a TiO₂ project in China, which
17 never materialized. He said another ex-DuPont employee was
18 involved, but was reluctant to identify him.

19 Mr. Axelrod in his statement said -- closing argument said
20 that Mr. Maegerle didn't identify any ex-DuPont employees.
21 Well, that's not what the agent testified to; that she
22 testified to he was reluctant to identify anyone. And I think
23 you would be reluctant to identify anyone with all the FBI
24 crawling all over your house.

25 Later he did identify Dan McIntosh. He told the agents

1 about the 1998 meeting in California, and that the contract did
2 not materialize, and it was with a Chinese client who built a
3 plant in China that didn't go through.

4 He told the agents that he had another contact from
5 Mr. Liew in 2005 about Jinzhou, and that it was a Chinese
6 company. They wanted a 30,000-ton plant, and that they already
7 had a chloride-route plant up and running, Jinzhou did.

8 Agent Pattillo claimed that Mr. Maegerle did not mention
9 Kuan Yin or Taiwan, and we'll talk about that in a little
10 while.

11 He also mentioned that he did not mention Tim Spitler, and
12 remember Mr. Spitler is dead. Maybe he -- and maybe he did and
13 maybe Agent Pattillo forgot. You'll see Agent Pattillo can
14 forget important names; and I would say that overall when you
15 hear what was really going on at the time, you might understand
16 why Mr. Maegerle might forget or not remember everything --
17 everything that's happened in this courtroom.

18 Mr. Maegerle told the agents that Jinzhou's design was
19 based on Ashtabula, Ohio. The plant was built for DuPont in
20 the 1960s, and it was sold to Sherwin-Williams; and that he
21 believed that the DuPont -- that the sale of DuPont's TiO
22 technology was public knowledge, and that this was not the
23 first time.

24 And as we know, this isn't the first time Mr. Maegerle
25 states this. Mr. Maegerle talked about the Pangang project,

1 the 100,000-ton plant in China.

2 He talked about USAPTI and how the company, he thought,
3 lacked the skills to complete the job. Do you say that if
4 you're in a conspiracy? And that's what he said.

5 Mr. Maegerle said he was paid \$125 an hour. And he told
6 the agents he did not believe DuPont had a very strong civil
7 case against USAPTI, because the information was public
8 information concerning DuPont's TiO2 processes, and he gave
9 them some examples of that public information.

10 He told the agents he turned in all proprietary
11 information back to DuPont at the time he retired.

12 Mr. Maegerle told the agents he retained some information,
13 including memos, but had destroyed them over time; and he may
14 still have some DuPont information, but he didn't believe any
15 of the memos -- that he had any memos in his possession at the
16 time.

17 He told the agents he did not retain the Basic Data
18 Document, but returned it upon his retirement. He stated he
19 did not provide DuPont proprietary information to lure USAPTI.

20 Concerning blueprints, Mr. Maegerle stated he did not give
21 any pink or blue sheets to Liew. He said Liew may have gotten
22 the sheets from a contact Mr. Liew had in China who dealt with
23 dealings with DuPont.

24 The Government has argued that Tim Spitler gave the sheets
25 to Mr. Liew, but there's no evidence that Mr. Maegerle knew

1 where Mr. Liew obtained the documents. There is -- they
2 referred to one document, I believe it's Exhibit 70, where
3 Mr. Liew prepared -- says, basically, to Mr. Maegerle, "Your
4 numbers are wrong, and I've looked at them. Tim has sent me
5 some kind of notes or a sheet or something," but it doesn't say
6 "blueprints" or anything like that.

7 Mr. Maegerle denied any design information in the Taiwan
8 plant because he said the plant had not been built until after
9 he retired. And he said -- remember, the -- and, remember, the
10 Kuan Yin plant was originally to be a 60,000-ton plant, I want
11 you to remember, and we know it's at least 160,000-ton plant.

12 We know that Kuan Yin plant was not completed until after
13 1994, three years after Maegerle retired.

14 After an hour, Agent Pattillo told Maegerle they had a
15 search warrant and they were going to search his home.
16 Maegerle had a few questions, but Agent Pattillo could not
17 remember what they were. They searched Mr. Maegerle's house,
18 but did not find the Basic Data Book.

19 Clearly Mr. Maegerle had provided the agents with an awful
20 lot of information. You heard that on direct. But under
21 cross-examination, you heard more of the circumstances of the
22 providing of the information and how much information
23 Mr. Maegerle really provided to the Government.

24 If you remember, I started out my cross-examination of
25 Agent Pattillo, and you learned that after interviewing a

1 witness, sometime after that, FBI agents make a report called
2 an FBI 302, which is a report of the interview.

3 The 302 of Mr. Maegerle's interview was written by
4 Agent Koblitz from the FBI, in the Palo Alto office of the FBI.
5 You learned that Agent Pattillo took no notes -- that
6 Agent Pattillo took some notes, but we don't know how many or
7 what portions of Mr. Maegerle's interview these notes cover.

8 We know that Agent Pattillo -- Agent -- we know that
9 Agent Koblitz did not write the 302 report until several days
10 after he got back to California from Delaware. We know that
11 Agent Pattillo didn't write a report of the interview, of
12 Mr. Maegerle's interview.

13 We know that Exhibit 722 that is seized at Mr. Maegerle's
14 home contains DuPont's -- I'll go to that in a little while --
15 DuPont's records, which show Mr. Maegerle's last two
16 assignments were DeLisle, Mississippi, and Korea, just as he
17 told them.

18 We know that none of Maegerle's employee agreements -- I
19 cross-examined her -- none of Maegerle's employee agreements
20 for DuPont were in that folder nor were Gaylord Chemical
21 agreements. None of these agreements were found at
22 Mr. Maegerle's homes. They were subpoenaed by the Government.

23 Agent Pattillo admitted that the search team actually
24 consisted of 20 agents all armed and having windbreakers that
25 said "FBI." She testified that the search team was kept a

1 couple miles away from Mr. Maegerle's house when Agent Pattillo
2 and the other Agent Koblitz approached the home and knocked on
3 the door.

4 I asked Agent Pattillo if that was because she did not
5 want Mr. Maegerle to see the search term. Agent Pattillo, do
6 you remember what she said? No, they kept them miles away
7 because she did not need the search team at that time.

8 How did she know that? Suppose Mr. Maegerle refused to
9 talk to her? They would have had to serve the search warrant
10 right then and there. Don't you think they kept -- don't you
11 know they kept that team so he didn't -- you know, because they
12 wanted to talk to him.

13 And she admitted that no one wrote down what they said to
14 Mr. Maegerle when he answered the door.

15 She admitted Mrs. Maegerle was at home, was seriously ill,
16 and had a nurse with her the whole time the FBI was in
17 Maegerle's home.

18 She never told Mr. Maegerle they had the search warrant at
19 the house when she spoke to him at the door.

20 She repeated her story she said on direct that they did
21 not tell Mr. Maegerle that they were there to search his home
22 because they wanted to have a good conversation with
23 Mr. Maegerle, and to tell him there was going to be a search
24 would be a very distracting thing.

25 I don't believe that's the reason. The reason is they

1 wanted to talk to him. Maybe they didn't want to panic him, or
2 they didn't want him to know what was going on.

3 Agent Pattillo said they spoke to Maegerle for an hour
4 before she told Mr. Maegerle that there was a search warrant at
5 the home. Pattillo admitted that when she and Agent -- when
6 they entered the home, Mr. Maegerle asked them to step into the
7 office because he didn't want to upset his wife.

8 I believe you heard the cross-examination that
9 Mr. Maegerle left the door open, and I submit it was so he
10 could see his wife who was ill.

11 The agents asked Mr. Maegerle questions, but they didn't
12 write down any of the questions or his answers.

13 They simply -- Agent Koblitz simply made notes of the
14 interview of Mr. Maegerle.

15 Mr. Maegerle told Agent Pattillo he had a book of
16 conceptual drawings of the two TiO plants he had worked on for
17 Walter Liew and USAPTI, and he got and gave the book to the
18 agents. It's Exhibit 53. I believe it's 53. It's got 75
19 pages and it contains only two references to Kuan Yin and
20 Taiwan.

21 He told them he wasn't aware of the ownership structure of
22 Pangang.

23 She admitted he was very cooperative both before and
24 during the search. He showed her -- I showed her pictures of a
25 bookcase in Mr. Maegerle's office and I asked, "Do you

1 remember" -- I had asked her if she remembered if she looked at
2 the books and manuals in the bookcase. "No, didn't look at
3 them. Don't remember looking at them. Don't know if we seized
4 them."

5 And she testified after they told Mr. Maegerle that they
6 were going to search his home, they moved Mr. Maegerle from his
7 office to the porch and continued talking to him. Importantly,
8 they never told him he was a suspect.

9 And Agent Pattillo couldn't distinguish between what
10 information Mr. Maegerle provided on the porch versus in his
11 office.

12 From the time the FBI came into his house, Mr. Maegerle
13 was never alone. They -- Agent Pattillo was not present at the
14 whole time. Sometimes it was only Agent Koblitz and sometimes
15 it was only Agent Pattillo with Mr. Maegerle.

16 Agent Pattillo admitted that Mr. Maegerle talked to the
17 agents not one hour, four hours. Four hours. But she did not
18 make even one note.

19 At one point during the search, Mr. Maegerle told the
20 agents they'd missed one of the computers and one of his cell
21 phones.

22 Importantly, the agent did not tape record the interview
23 of Mr. Maegerle. Well, they said that's FBI -- FBI doesn't do
24 that. Well, don't you think when it's an important case like
25 this, when you know there's a possibility you're going to

1 charge someone, and you're going to stand up here and have an
2 Assistant U.S. Attorney say you lied, that you sure want it
3 recorded?

4 They did not write out a statement exactly what he
5 asked -- what they asked or what he told them. They did not
6 have Mr. Maegerle write out a statement. They didn't have him
7 sign a statement. They didn't have Mr. -- they didn't have
8 Mr. Maegerle review the FBI 302.

9 I ask you: How can you rely on what Agent Pattillo tells
10 you about what she remembers in a four-hour interview that
11 occurred on July 2011 when she didn't make one note of such an
12 important interview, not one note? And the FBI 302 wasn't made
13 till several days -- we don't know how many days afterwards.
14 How can you not report stuff?

15 In some of the ways, too, Agent Pattillo's statements
16 don't make sense. How come the -- how come they didn't call
17 the agent that's in South -- San -- Palo Alto? I'm not from
18 here. But he's here in California. He's in the Bay Area. Why
19 would they -- why did they put up an agent that didn't take a
20 note, that didn't write a report?

21 Agent Pattillo admitted that she remembered that
22 Mr. Maegerle provided other information to the FBI. He told
23 the agents he believed that since the TiO2 technology was in
24 the Ashtabula plant, it was available. He told about the sale
25 of the plant to Sherwin-Williams, and the plant had been sold

1 to other competitors; that based on this sale, Maegerle --
2 Mr. Maegerle believed DuPont's technology was in the public
3 domain. Maegerle also gave examples of DuPont's technology
4 that was in the public domain, including the chlorine catch
5 tank. Agent Pattillo didn't make -- did not make a list of the
6 examples Mr. Maegerle gave her.

7 Mr. Maegerle consistently stated he believed DuPont's
8 technology was in the public -- TiO technology was in the
9 public domain. Mr. Maegerle said he believed that the civil
10 case -- he did not find it very compelling.

11 He told the FBI he believed he was subject to a five-year
12 limitation on DuPont's contractors just as DuPont's contractors
13 and consultants who had complete access to DuPont's TiO
14 technology because after the five years period, the consultants
15 and the contractors had no further obligation to DuPont.

16 He said that he could not -- he believed he could not
17 consult for a DuPont competitor five years. After that time,
18 he was free to consult with anyone.

19 He also said -- well, as we know, this isn't the first
20 time that Maegerle has made these statements. There's evidence
21 from as early as 1997. He told the FBI he still may have some
22 DuPont memos around the house, but they would not contain any
23 proprietary information.

24 I cross-examined her and she admitted he always used the
25 word "proprietary" -- the words "proprietary information" when

1 talking about information from DuPont, and consistently
2 maintained he had not used any proprietary information when
3 working for USAPTI.

4 Agent Pattillo admitted that Mr. Maegerle volunteered to
5 the agents his e-mail address. Volunteered. Not only does he
6 give a computer and his cell phone in this, he volunteers his
7 e-mail address.

8 He also gave the names of eight different people who
9 worked at USAPTI. And, remember, Mr. Maegerle used the terms
10 "Kuan Yin" and "Taiwan" freely in his e-mails, e-mails to
11 USAPTI. Why would Mr. Maegerle give employees' names and his
12 e-mail address and not tell them about -- not use "Taiwan" or
13 "Kuan Yin." It could be we don't know what the questions were
14 asked. It could be she forgot.

15 He gave -- he gave the FBI the name of one of the Pangang
16 executives who USAPTI met with in California. He gave the
17 background on Dan McIntosh, that he was an ex-DuPont employee
18 who consulted and attended meetings.

19 Agent Pattillo admitted she wasn't even there when
20 Maegerle gave that information to Agent Koblitz. That happened
21 out on the porch or someplace else.

22 Maegerle told the FBI he had no animosity towards DuPont,
23 and his father worked for and had retired from DuPont.

24 Maegerle told the agents he had retired from DuPont 20
25 years ago and had a DuPont pension. Again, he repeated he took

1 no proprietary information, and any information he had at this
2 time was 25 years old.

3 Does that sound like a man who, you know, was lying or
4 trying not to cooperate?

5 This is very important. Agent Pattillo could only
6 remember the name of Dennis Dakin when I asked her did
7 Mr. Maegerle tell the agents about getting oral permission from
8 DuPont to do work as a TiO2 consultant.

9 I hope you remember I said to her -- I asked her, "Didn't
10 Mr. Maegerle give you another name who he talked to at DuPont
11 on another occasion who gave him permission to work as a TiO
12 consultant?" She said she didn't remember.

13 And I asked her, "Didn't he give you the name Mr. McCullin
14 at DuPont in connection with DuPont's approving his work with
15 the TiO2 technology?" She admitted she didn't remember the
16 name until I reminded her of it because it had been a while
17 since she had interviewed Mr. Maegerle.

18 Mr. Maegerle, in fact, had given her -- she admitted
19 Mr. Maegerle had, in fact, given her Mr. McCullin's name as one
20 of the people having approved him as a consultant. Where's
21 Mr. McCullin? Why didn't the FBI call him?

22 You should ask yourself several questions about the
23 testimony. How come the agent who was stationed here in the
24 Bay Area was not called? Is it logical that Mr. Maegerle was
25 involved in a conspiracy to steal DuPont trade secrets, would

1 give all the information he gave to the FBI in that house, that
2 he would stay there for four hours?

3 And if he did forget something -- oh, and he had given up
4 a computer which they missed, a cell phone, and he voluntarily
5 gave them his e-mail address. Voluntarily. He volunteered it.
6 And he gave the names. Why would he do that? And if he did
7 miss something, he knew he had a seriously ill wife. He had
8 10, 15, armed FBI agents running around his house. Tell me
9 you're going to remember everything.

10 So there's one other -- I submit to you that rather than
11 hurting or some argument that Mr. Maegerle's contact with the
12 FBI at his house is in some way that he lied, I submit to you
13 that it shows his innocence, that he cooperated that way,
14 volunteered the things that he did and under the conditions
15 that he did.

16 The last witness I want to talk about, I know you've heard
17 a lot, is Brian McLaughlin. You may not remember who
18 Mr. McLaughlin was, but he was a very important witness in this
19 case. He was the head of Human Resources at DuPont. He was
20 not the custodian of DuPont's -- the custodian of DuPont's
21 personnel records. That's the person in charge of maintaining
22 and producing DuPont's records in court.

23 Mr. McLaughlin never reviewed Mr. Maegerle's entire
24 personnel file, nor did he ever have it, nor did he bring it to
25 court.

1 What he told you was, under my cross-examination, several
2 weeks before he testified, DuPont's attorneys and some agents
3 called Mr. Maegerle into a room at DuPont's corporate
4 headquarters and showed him a few documents from Mr. Maegerle's
5 personnel file. And that's all he brought, and we'll talk
6 about those documents.

7 I asked him if there could be other documents in
8 Mr. Maegerle's personnel file that could affect this case. He
9 said, there could be but he's not sure because he was never
10 shown Mr. Maegerle's personnel file.

11 Well, that file could and did contain critical
12 information. And you want reasonable doubt why DuPont did not
13 want Mr. McLaughlin to bring Mr. Maegerle's entire personnel
14 file to court? I believe I'll show you that there were reasons
15 that DuPont did not want Mr. Maegerle's entire file, and I will
16 discuss that in a few minutes.

17 Mr. McLaughlin only had Exhibit 775, which was the
18 employment agreements. Mr. Maegerle signed those agreements in
19 1957 and 1961; and when he retired, there was an agreement --
20 there was a note that he signed in 1991.

21 Look at the 1957 agreement. It's mostly about inventions.
22 It's signed 33 years prior to Mr. Maegerle's retirement and
23 about 47 years after he started working for -- before -- after
24 he started -- before he started working for USAPTI.

25 Look at the 1963 agreement, and it states in the first

1 paragraph that DuPont seeks to protect three types of
2 information: Patent, confidential, and secret. It shows there
3 is a difference between those types of information; however,
4 the agreement does not define what secret information is or
5 even confidential information.

6 There is no evidence Mr. Maegerle received a copy of the
7 documents. In fact, I would submit that the evidence is to the
8 contrary. Mr. McLaughlin had no evidence that Mr. Maegerle
9 received copies of any of these documents. Maegerle's home was
10 searched and the FBI didn't find them.

11 And Mr. Maegerle does not know, importantly, how many
12 documents Mr. Maegerle signed and the dates he signed the above
13 documents or if he read any of them. Who knows? You're coming
14 to a new job, there's a lot of things you sign. Anyone had
15 that experience of closing out a house? They shove documents
16 in front of you, you sign them.

17 Let's stop here for a minute, and I want you to remember
18 certain things. Mr. Maegerle is not charged with breach of
19 contract. That's a civil action. If he breached his contract
20 with DuPont, it does not make him guilty of a crime.

21 He's not charged with having -- improperly having DuPont
22 documents or information.

23 He's not charged with theft of confidential information.

24 Mr. Maegerle -- the charges against Mr. Maegerle are the
25 alleged trade secrets of DuPont trade documents -- trade

1 secrets -- excuse me -- the alleged theft of alleged DuPont
2 trade secrets.

3 Now, as I said to you, no document in this case,
4 particularly this (indicating), is stamped "Trade Secret." And
5 I want you to remember some testimony in this case, some
6 cross-examinations I did.

7 Mr. Dayton, DuPont executive, who was involved deeply in
8 the TiO₂ process, testified just because something was marked
9 "Confidential" did not make it a trade secret. Both Mr. Dayton
10 and Mr. Olson, both DuPont employees, testified there's a
11 difference between confidential information and trade secret.

12 Mr. Livingston, the Cristal vice president, was who was
13 called here by the Government, said there is a difference
14 between trade secret and confidential information.

15 Mr. Cooper, the TiO expert, testified there's a difference
16 between trade secret and confidential information. If a trade
17 secret is not defined, the person has to use their own
18 judgment.

19 Now, I'd like to show you exhibit -- some things from
20 Exhibit 722. These are documents that were seized from
21 Mr. Maegerle's residence that were part of his employment at
22 DuPont.

23 I would also add that Mr. Gibney also said there was a
24 difference between -- Mr. Gibney also said that there was a
25 difference between secret information and confidential

1 information.

2 Hold just one second. I want -- would you just take that
3 down for a second? I just want to talk about one other thing.

4 I want to talk very quick about confidentiality. By way
5 of speaking of confidentiality, Mr. Gibney, the Government
6 expert on confidentiality, he worked for NL Industries and
7 Tronox, and he talked about how tight security was on their
8 TiO2 technology. He said nobody knew about NL Securities [sic]
9 or Tronox's TiO2 processes.

10 You know what? He should have been in the courtroom when
11 Mr. Dayton, of DuPont, testified that he had full knowledge of
12 NL Industries TiO2 technology because a company that was
13 looking into buying one of NL Industries TiO plants put all of
14 NL Industries' TiO2 technology, to quote Mr. Dayton, in the
15 public record. Mr. Dayton also testified at the trial they
16 published its technology in Canada.

17 I would like you also to remember that Mr. Cooper talked
18 about knowledge in the trade, which is a term used in
19 engineering, and that it's recognized in the engineering field
20 that you're allowed to carry the knowledge with you.

21 I want to talk -- another important piece of testimony
22 from Mr. McLaughlin was he was asked by Mr. Scott here on
23 direct examination -- this is not me cross-examining him, this
24 is direct examination -- "How long does Mr. Maegerle's
25 employment agreement last?" That was the question. I hope you

1 remember the answer. The answer was: (reading)

2 "The employment agreement lasts for the duration of
3 the employee's employment, and up to three years from the
4 termination of their employment from the company."

5 He was looking at the agreement. He was looking at the
6 agreement, and that's what he said.

7 Now, Mr. -- they came back and they asked him, after -- he
8 was stunned after that, so they came back and said, "Well, the
9 agreement is really permanent." Well, is it three years or is
10 it permanent? I mean, if you're looking at an agreement and
11 you're the head of Human Resources and you don't know, how else
12 should anybody else know?

13 Now I'd like to just show you a couple of pages from
14 Mr. Maegerle's, and then I'm just about finished.

15 Look at pages 3 and 4 of Exhibit 722. It's the review of
16 Mr. Maegerle's responsibilities. One was to develop the idea
17 in DuPont that full-service design contractors had a
18 transparent relationship with DuPont.

19 You've got to remember what's been going on. DuPont's no
20 longer doing any of its design. It's feeding everything to its
21 consultants, and that's what Mr. Maegerle's thing is to do.
22 One of his things was to be transparent, to promote the value
23 of the release of design information, and to have technical
24 packages sent to the contractors' offices. That's some of the
25 things they were saying he should do.

1 On page 5: Maegerle had strong technical knowledge of
2 Mr. DuPont -- excuse me, of DuPont's TiO technology. No doubt.

3 Look at page 11. It talks about Mr. Maegerle's work with
4 outside contractors. Based on the above, I mean, it's evidence
5 he knew what was going on. He knew that they -- what was trade
6 secrets; and he knew, Mr. Maegerle, that there were no trade
7 secrets involved in this.

8 But the most important thing I would like to talk to you
9 about is that Mr. McLaughlin talked about -- testified about
10 pages 1 and 2 of Exhibit 722. And what did that show? It
11 showed that Maegerle's knowledge and experience authorized him
12 and designated Mr. Maegerle -- and this was testimony, not only
13 this -- as an expert in DuPont's trade secret policy, and
14 DuPont gave Maegerle the authorization and power to decide what
15 is a true DuPont trade secret and could even advise others on
16 what was a trade secret.

17 Okay. In effect, DuPont gave Mr. Maegerle the authority
18 and the ability to make the determination of what was or was
19 not a DuPont trade secret, and even to give others advice on
20 that, and to even give advice on that.

21 Mr. Maegerle used -- he used that authority or decision in
22 making it what he did in this case. And you heard from the
23 agents and he told you that these were not trade secrets.
24 How's that for reasonable doubt?

25 Mr. Maegerle had the experience, had the authority when he

1 was at DuPont, and he's consistently said what he gave to
2 USAPTI was not trade secrets; and I submit to you that was his
3 belief, and I think that was the fact. And as long as he
4 believed it and had a reasonable belief, he's innocent.

5 I know I ramble. I tend to do that. I jump around a lot.
6 I mispronounce names like crazy, but I'm trying to get points
7 across to you and I hope I have. And I hope -- they wouldn't
8 allow me to bring a translator for my New Jersey accent,
9 otherwise it would have been much better probably.

10 This is the last time I get to speak to you. I know
11 you've been very, very attentive. I've tried a lot of cases
12 and you're as attentive as any jury I've ever seen.

13 You've been told Mr. Hemann's going to get the last word.
14 I will not get to respond. I'm going to be sitting there
15 jumping up and down dying to respond, so I ask you one favor,
16 it's up to you. But when Mr. Hemann makes his argument and
17 cites to different things in the record, say -- just ask
18 yourself: What would Jerry Froelich say about that? And then
19 make your decision. Thanks a lot.

20 **THE COURT:** Thank you, Mr. Froelich.

21 Mr. Hemann?

22 **MR. HEMANN:** Thank you, Your Honor.

23 **CLOSING ARGUMENT**

24 **MR. HEMANN:** So good afternoon. This is going to be a
25 little bit rougher, I think, than some of the closing arguments

1 because my job is to try to take on, as directly as I can, some
2 of the things that have been said by Mr. Gasner and
3 Mr. Froelich over the last five or so hours.

4 I'm going to try to do so within about an hour, and I'm
5 going to try to do so as directly as I possibly can by talking
6 about the arguments that they have made. And I'm not going to
7 try to shy away from the evidence that they have focused on
8 both throughout the trial and today and yesterday in their
9 closings.

10 One of the things that I'd like to start with is, that I'm
11 going to try to do something that I feel is a little bit
12 different than what they did. I don't feel, based on what we
13 have seen over the last five hours, that the Defense
14 meaningfully addressed the evidence that the Government put on
15 with regard to the elements of the case at hand.

16 There was a great deal of evidence about stacks of paper
17 to the moon. There were arguments about how out of all the
18 evidence that you've seen over the past, you know -- you know,
19 all the evidence available in Mr. Maegerle's house and the
20 office and the residence, they only focused on a couple of
21 pieces of paper. And we're not really going to focus that much
22 on those pieces of paper.

23 We're really not going to focus that much on that chart
24 that Mr. Dayton and Mr. Axelrod did painstakingly go through
25 over about a day. That really didn't come up at all. That

1 wasn't put in front of you. They didn't go down and say,
2 "Well, this one. This one. This one. Explain where that one
3 is." Mr. Cooper hit a couple of them, and then on
4 cross-examination admitted, "Well, ranges really, not that
5 number." Well, those numbers are important, and they come from
6 somewhere, and they come from these documents (indicating).

7 And it's the evidence in the case that you've seen that's
8 important. It is not the argument of the lawyers. It's the
9 pieces of paper that were found in the defendants' houses and
10 offices, the words that the defendants used at the time.

11 And we've gone back and forth over this over seven weeks
12 now, and what is more important, the things the defendant said
13 at the time about what they were doing; or the things that
14 their lawyers, with the benefit of a couple of years of
15 rehearsal, have come up to explain, "Well, maybe he didn't
16 really mean this; maybe he didn't really mean that?"

17 I do agree with something that both Mr. Gasner and
18 Mr. Froelich said when they stood up. The first four counts of
19 this case are about what was in the defendants' heads. And
20 what is the best evidence of what's in a person's head? Well,
21 I would submit to you, ladies and gentlemen, that it's what
22 they say at the time that they are doing the things that are at
23 issue.

24 And that is what this case is about, not a post hoc
25 explanation justification come up with by lawyers and experts

1 years later on. And it is those things that I would like to
2 focus with you on for the next hour or so.

3 I sat here with Mr. Axelrod yesterday at the beginning of
4 Mr. Gasner's argument, and you typically wait and hear you're
5 going to get hit hard right away, right out of the box, and
6 what are they going to start with that's going to be their best
7 argument. And what did we hear? This is their best argument
8 (indicating), the anonymous letter that some guy may or may not
9 have sent to DuPont in August of 2010.

10 Mr. Gasner -- no evidence -- Mr. Gasner says it was
11 probably a former employee named Peter Wong. Well, that's not
12 evidence. That's Mr. Gasner's speculation.

13 And where's Peter Wong? You heard over and over again
14 from Mr. Gasner and Mr. Froelich, "Where's so and so? Where's
15 so and so?" We have subpoenas here in court. It's the
16 United States of America. Send the guy a subpoena, and bring
17 him on in. We can do it. They can do it. Even playing field.

18 Who knows who wrote this letter? But, more importantly,
19 ladies and gentlemen, who cares? The point of this anonymous
20 letter is to say that DuPont has said -- has persuaded, somehow
21 forced, compelled Cynthia Ho, and Richard Scott, and Pete
22 Axelrod, Chris White, Cecily Rometo to go after the little
23 fish. Big bad DuPont has somehow leaned on the United States
24 Government to victimize Walter Liew.

25 And how did they do it? Well, they probably waited and

1 waited and waited. Because they were so worried about USAPTI
2 that they waited for an anonymous letter; and the anonymous
3 letter came, thank God, in August of 2010. And what did they
4 do? They waited until February of 2011 to go to see the FBI
5 after they had done an investigation and had some evidence.

6 Now, I think I have this right. This is my first unholy
7 alliance, and so I'm struggling through it. But that's what
8 they're accusing DuPont and the government of.

9 And they're saying that the stew that Walter Liew finds
10 himself in is because of an anonymous letter by somebody that
11 they can't identify, and not because these documents or
12 evidence of these documents were found in his possession; not
13 because he skipped out on \$6 million in United States taxes;
14 not because he lied to the Bankruptcy Court; not because he
15 tried to get Jian Liu to lie; not because he lied to the FBI;
16 but because of some guy's anonymous letter to DuPont.

17 And then there's DuPont. DuPont is centric; DuPont is
18 bad; DuPont is evil.

19 Well, the great irony of that is that Mr. Liew sets out to
20 do exactly what DuPont was doing.

21 And Mr. Gasner derisively accused DuPont of being this
22 bloated American company. It's rather extraordinary that he is
23 derisively calling DuPont that while his client is in bed with
24 a 60- or 70,000 employee Chinese state-owned entity.

25 It is absurd to suggest that Walter Liew is a Silicon

1 Valley entrepreneur who is trying to be squashed by a bloated
2 American company.

3 And why, ladies and gentlemen, should DuPont be any
4 different than any other victim of any other crime? DuPont is
5 entitled to attempt to protect its trade secrets.

6 So the beginning of this case is DuPont has somehow made
7 the Department of Justice and the FBI go after little Walter
8 Liew, to protect some unknown agenda that DuPont has.

9 I would submit to you that when Congress enacted the
10 Economic Espionage Act their purpose was to protect the Burt
11 Diemers and the Dan Dayton of the world who have a right to
12 work at their jobs in the United States; who have a right to
13 protect their intellectual property, and to have it not
14 distributed to foreign state-owned -- foreign state-owned
15 enterprises that come by these documents unethically and
16 illegally.

17 The second issue that we got to, and we got to this with
18 both Mr. -- with Mr. Gasner and with Mr. Froelich. And the
19 issue is this issue of Mr. Maegerle being free to consult with
20 or work for Walter Liew after he left DuPont.

21 This has been an issue, as you all know, since almost the
22 first day of the trial. And the question, ladies and
23 gentlemen, is what is it exactly that he is free to do, and
24 what is he not free to do?

25 And that issue has been clouded and clouded and clouded.

1 And it's almost if the more words that are used in court to
2 talk about that issue, maybe you'll forget what -- what the
3 real issue is here.

4 And it's incredibly simple. The real issue here is that,
5 of course, Mr. Maegerle is free to walk out the door at DuPont
6 and the next day get a job at a competitor. There is no
7 dispute about that. Nobody has said otherwise. Every witness
8 that the government called said exactly that. He is free to do
9 this. No restriction.

10 Mr. Liew didn't even have such a free -- give his
11 employees such free rein. He had a noncompete clause, you'll
12 remember, in his employee agreements where he said you can't go
13 work for somebody else for three years.

14 What can't you do? You cannot take DuPont's stuff and
15 walk out the door with it and give it to somebody else, whether
16 that stuff is in your head or whether that stuff is in your
17 hands. That is what you're not permitted to do.

18 The distinction is clear. All of Mr. Liew's agreements
19 that he wrote and gave to his employees say that. The DuPont
20 agreements that Mr. Maegerle signed, both at the beginning, and
21 we keep conveniently forgetting, at the end of his employment,
22 say that.

23 You can't take their stuff. And, again, it's so basic
24 Mr. Axelrod described it as something you learn in
25 kindergarten. Of course. This isn't some complicated concept.

1 You're not allowed to take somebody else's stuff.

2 Mr. Maegerle is a sophisticated guy. As Mr. Froelich just
3 wrapped up on, he is a guy who was involved in the intellectual
4 property protection program at DuPont. He knew. He signed the
5 documents. He can read. He said, I'm not going to take their
6 stuff. In fact, he said, importantly, I've given everything
7 back. And those are the rocks on which the defense argument
8 fails in this regard.

9 Mr. Gasner and Mr. -- Mr. Gasner showed you a couple of
10 documents here, Exhibit 694 and Exhibit 1008. They are two
11 documents that have been admitted for Mr. Liew's state of mind.

12 And one of them is this note to Roger Finato, or a draft
13 of the note to Roger Finato. And one of them is on legal issue
14 with DuPont. And these are shown to you with great fanfare, as
15 if they say something other than that which I just said.

16 They say after five years -- and, again, nobody has
17 explained to you, none of our witnesses, none of the defense
18 witnesses, have explained to you where this 5-year thing comes
19 from. It comes from nowhere. Mr. Maegerle may have come to
20 that in good faith. Maybe he did; maybe he didn't. But it
21 doesn't come from anywhere because it doesn't mean anything.

22 He could have left DuPont the next day and worked for
23 Walter Liew. But neither of these letters say that he's
24 allowed to use DuPont stuff.

25 In fact, the letters say exactly the opposite. When

1 Mr. Liew was reciting what he learned from Tim, Mr. Spitler,
2 and Maegerle, and McIntosh, there is an underlying assumption
3 that you can't take DuPont stuff. Because Mr. Maegerle has
4 signed --

5 **MR. FROELICH:** I have an objection, Your Honor.

6 **THE COURT:** Overruled.

7 **MR. HEMANN:** -- has signed a document saying, I've
8 returned everything.

9 And the reason that these -- these notes are totally
10 irrelevant is because they assume a person, a former DuPont
11 employee, who has -- who does not have trade secrets because
12 DuPont employees, like all employees of companies, are required
13 to return everything.

14 So these notes don't say Mr. Liew -- Mr. Maegerle can come
15 work for Mr. Liew and bring all of his DuPont stuff and bring
16 all of his DuPont knowledge and share DuPont trade secrets.

17 What they say is Mr. Maegerle can work for Mr. Liew.
18 That's what they say. There's no -- that's unremarkable.
19 There's no dispute about it. It's true.

20 These notes don't give him permission to do anything he
21 wants to do. And we know that for a variety of reasons.

22 One of them is -- and, Ms. Mahoney, could you put up
23 369T-0004.

24 **THE CLERK:** It will be a moment.

25 (Document displayed.)

1 **MR. HEMANN:** About halfway through there's a paragraph
2 in the middle, that one, "DuPont stipulates that ..."

3 Now, this is information that the Pangang Group received
4 from Walter Liew. And what it says is, you can work, we can
5 get former DuPont people to work for us, but it says right in
6 the middle "can do similar work but cannot use official DuPont
7 material."

8 That's what Mr. Liew told the Pangang Group.

9 You heard a conversation about how engineers, they need to
10 leave and they need to work. Sometimes they get laid off, they
11 move on. And they have to have a zone of freedom, was the term
12 that Mr. Gasner used.

13 Well, again, this is a Mr. Gasner term. This is not a --
14 an evidence term. None of the agreements that we've looked at
15 talked about a zone of freedom.

16 But what we know is that you are allowed to work on one
17 hand, and that you are not allowed to use DuPont's stuff on the
18 other hand, whether you've memorized it, which is what the jury
19 instruction says, or that you have straight up taken it, like
20 we see in this case. There's no zone there, no judgment needs
21 to be exercised. It's kind of a black and white sort of thing.

22 And, of course, it is that case for the obvious reason,
23 because take a moment and exercise, when you go back to the
24 jury room, just your common sense, which is why we have jurors
25 in the first place. What's the world look like if this isn't

1 the case?

2 The world looks like, I will get a job at DuPont; I work
3 there for three weeks; I grab a bunch of stuff; I sign my thing
4 saying I returned it, but I don't; and then I go home and watch
5 TV for five years; and then on five year and one day I go to
6 the place that wants it and I open up a little storefront and I
7 say, For sale, DuPont stuff; come on in.

8 Well, that's obviously not, and the defense doesn't
9 articulate it that way because they know that it's absurd. But
10 that's what they're trying to get you to buy off on.

11 Of course, Mr. Maegerle can leave; of course he can work
12 for DuPont. But he can't say after five years I'm a free man;
13 i.e. I'm a free man to use the DuPont stuff that I took with me
14 when I left.

15 And Mr. Axelrod went through with you all of the evidence
16 about how Mr. Liew and Mr. Maegerle understood that there were
17 secrecy obligations before; they understood it during; and they
18 understood it after these crimes took place. And he showed the
19 examples to you in their own words at each point along the
20 spectrum.

21 This, ladies and gentlemen, is a -- has been, maybe, along
22 with the Ashtabula thing that I'm going to get to in a moment,
23 the biggest thing in the trial. And it is resolved simply by
24 the most basic exercise of common sense plus looking at the
25 words like this on the screen, that the defendants used at the

1 time that this was all going down.

2 Thank you, Ms. Mahoney.

3 So the Ashtabula contract --

4 **THE COURT:** Before we do that, let's take a stretch
5 break.

6 **MR. HEMANN:** Thank you, Your Honor.

7 (Pause)

8 **THE COURT:** Please be seated.
9 You may continue.

10 **MR. HEMANN:** Thank you very much, Your Honor.

11 So we also have the Ashtabula contract. And we have a
12 contract. And that's it. We have a lot of lawyer words about
13 what this contract means, but we really don't have any evidence
14 of what the contract means.

15 We've got some evidence, however, of what happened in real
16 life after this contract was -- was executed in 1967.

17 The statements of the lawyers are they gave it all away in
18 1967. "They" means DuPont. They lost control; they sold their
19 technology; and it is all out in the public domain.

20 Those are a couple of examples of the words that you've
21 heard since the first day of this trial, about the Ashtabula
22 contract.

23 I would submit to you, ladies and gentlemen, there is
24 absolutely no evidence of any of that. And, in fact, I would
25 submit to you that the words of the defendants themselves are

1 going to pretty much wreak havoc with those lawyer conclusions.

2 Ms. Mahoney, could you put up 679, page 4.

3 (Document displayed.)

4 **MR. HEMANN:** And if you go down to the bottom -- I'm
5 sorry, top. Top, top, top. Sorry. There we go. Paragraph
6 58.

7 This is what Mr. Maegerle's interpretation of this was:

8 "DuPont released its technology to the competition in
9 1978 as previously documented." And that's his
10 interpretation of what happened with this. "Process
11 improvements made by DuPont, since that date, are unknown
12 and are not a part of the USAPTI design."

13 This stuff is all after DuPont (indicating). This might
14 be the most terrific argument in the history of the law, if
15 anything in this case had anything to do with Ashtabula.

16 The defendants' position is that DuPont, DuPont's TiO₂
17 business, has no trade secrets at all, anywhere, because in
18 1967 they sold it to Sherwin-Williams. But Mr. Maegerle
19 recognized there had been process improvements since then. And
20 he claims not to know them, which is not true, obviously.

21 Thank you, Ms. Mahoney.

22 But there were projects at DuPont that we know about, that
23 were not based on the Ashtabula technology. Edgemoor was a
24 perfectly good example.

25 There are projects that -- in DeLisle, which is the

1 factory that Mr. and -- that Mr. Liew told Pangang he was going
2 to base his design on.

3 The Accession Report doesn't mention Ashtabula. It has
4 all sorts of data and facts and figures and conclusions based
5 on other DuPont facilities.

6 And the Basic Data Document just -- I'm sure this will be
7 totally fascinating for you. Go through it. You'll see
8 records as to all of the DuPont factories. Because what
9 they're doing is compiling information about DuPont's
10 experience over the years in one place, so that they can build
11 a state-of-the-art factory, which is precisely what
12 Mr. Maegerle and Mr. Liew were trying to do. This isn't an
13 Ashtabula document. It wasn't written in 1967. And it refers
14 to a bunch of DuPont factories that are not Ashtabula.

15 So this case really doesn't have anything to do about
16 Ashtabula. And this contract does not come close to bearing
17 the weight that the defendants need for you to put on it in
18 order to reach a not guilty verdict.

19 This contract doesn't say that all of the Ashtabula
20 technology is public. And, in fact, it's not public.
21 Mr. Cooper did not identify anything from the Ashtabula plant
22 that is public. What he said is, yeah, well, we started it;
23 and then we built on it, and built on it, and built on it
24 within SCM.

25 I'm going to give you a little chronology, not too long.

1 In 1967, the contract was entered into. 1974, Sherwin-Williams
2 apparently decides it doesn't want to make the stuff and sells
3 it to SCM.

4 So even by the time the contract-mandated silence period
5 or nontransfer of technology period is over, it has gone to
6 SCM. SCM is a DuPont competitor. SCM has no interest in
7 giving away its Ashtabula technology. They didn't make it
8 public. It has value.

9 The defense argument has been, well, it's not reasonable
10 for DuPont to protect its technology by selling Ashtabula to a
11 competitor. Putting aside for a moment that Ashtabula is not
12 the basis for all the DuPont technology. It's not reasonable
13 for them to do that.

14 Well, they sold it to somebody who is not going to make it
15 public because it would be like selling you a diamond ring and
16 thinking, well, maybe I'll -- you know, tomorrow he's going to
17 take the diamond ring and put it on the curb and now the
18 diamond ring is public.

19 No. You don't sell something to somebody who actually is
20 going to maintain the value, and assume that the next day
21 they're going to, as Mr. Froelich suggested, publish it in the
22 newspaper. What reasonable economic actor would do that?

23 So when DuPont puts this small, outdated project on the
24 market -- and it's small. If you look at the contract, you'll
25 see it's a 27,000-ton project. Maybe it was big in -- in 1967,

1 but nobody is going to use a 27,000-ton project now to build a
2 100,000 ton. It is one-tenth of the size of DuPont's DeLisle
3 factory. It is a fifth of the size of Kuan Yin. It is a
4 fourth of the size of the proposed Pangang project.

5 Mr. Gibney said nobody would want to build Ashtabula
6 because it doesn't -- it's just irrelevant to what you all are
7 doing and what they're doing.

8 The idea that Ashtabula and its small size are somehow
9 relevant to this much larger process that DuPont is involved in
10 is absurd.

11 I would encourage all of you to spend some time looking,
12 first, at the jury instructions. The jury instructions don't
13 get into this distraction.

14 The jury instructions have a test. And the test is, were
15 reasonable measures taken? And the reasonable measures in this
16 case involve these things (indicating). And is the technology
17 or the actual compilations, are the trade secrets public?

18 Go to the law and apply the test. There's nothing in the
19 law that says that licensing technology 50 years ago, almost 50
20 years ago, makes it public. There's a factual test. It means
21 you go back and look at the evidence and make a decision as to
22 whether the technology is, in fact, public.

23 I would also go back again and echo the words of the
24 defense lawyers, which is this is about what was in their head.

25 You've seen nothing in the evidence about Ashtabula being

1 in the heads of these defendants until April of 2011. And all
2 the sudden Ashtabula becomes incredibly important. It becomes
3 incredibly important because it's done a heck of a lot better
4 than Kuan Yin.

5 You don't see it in the defendants' heads. And, in fact,
6 what you see in the defendants' head is just the opposite. We
7 see Mr. Liew saying again and again and again, the reason that
8 DuPont has done such a good job maintaining its position in the
9 industry is because it keeps its stuff secret. Those are his
10 own words. That's what's in his head.

11 Mr. Maegerle, in the 1980s, after the 1967 sale, is
12 writing memos at Kuan Yin saying the Basic Data Document and
13 the flow sheets need to be kept under lock and key.

14 He receives a memo while he's there. Can you put up
15 Exhibit 374, please. Oh, I'm sorry, I don't have the right
16 number on this one, Ms. Mahoney.

17 So I'll remind you of it -- oh, I know where it is.

18 It says -- Mr. Maegerle received a memo, it's 847, when he
19 was working on Kuan Yin, that says:

20 "Although one of our competitors knows all about our
21 Antioch technology, others do not have that degree of
22 knowledge."

23 So Mr. Maegerle is saying, yeah, one of our competitors,
24 SCM, knows about our Antioch technology. Others don't though,
25 so it still has value. Because one does, that doesn't mean the

1 public.

2 And if you look at the jury instruction, it says -- the
3 questions is whether the public knows. One competitor is not
4 the public. Even if one knows, but the others don't.

5 And then, second of all, even with the Antioch technology
6 we all know the other plants have technology beyond the Antioch
7 process. These are words, at the time, by people at DuPont.

8 I think there's one last point I'd like to make about
9 Ashtabula, and in particular about this 1967 contract that's
10 very important to what you all are going to be thinking about
11 over the next few days.

12 What Ashtabula illustrates is that there is a right way to
13 do this. There's a fair way to do what Mr. Liew and
14 Mr. Maegerle were trying to do. And that way is to go buy it.

15 Sherwin-Williams and SCM bought it. They paid money for
16 it. They didn't have the technology. They wanted the
17 technology. They went out and bought it.

18 Pangang wanted the DuPont technology. They had a meeting
19 in 2008. And DuPont said, no, it's not for sale. And Mr. --
20 Mr. Liew knew that.

21 In the PowerPoint attached to the Nora Lam email, which is
22 Exhibit 374, he says "Technology not for sale."

23 He knows DuPont technology is not for sale. There's a
24 meeting. Pangang tried to buy it. DuPont wouldn't sell it.

25 I don't know whether Pangang went to Kerr-McGee. Maybe

1 Kerr-McGee will sell it. You heard some testimony that there
2 are companies that license their technology. Go buy the
3 technology. Do it the fair way. Do it the right way.

4 But they wanted the DuPont technology, and the DuPont
5 technology was not for sale. So what did they do? They went
6 for Mr. Liew.

7 And what value proposition does an electrical engineer
8 from Silicon Valley have to a Chinese state-owned chemical
9 company? He's got some DuPont stuff. He doesn't have all the
10 DuPont stuff, but he's got some DuPont stuff.

11 He goes over there and he rolls out the Edgemoor plans,
12 and that's Exhibit 719, and he shows them, I've got the DuPont
13 stuff. And that gives him an advantage, and it gives Pangang
14 an advantage. It doesn't give them the whole thing.

15 We've heard over and over and over again, well, the final
16 thing didn't look like this. The final thing never looks like
17 that. And I'm going to talk about that in a moment with regard
18 to Mr. Cooper. The final thing, when you build a TiO₂ plant,
19 never looks like the first thing.

20 But he stole an advantage, and that's unfair. And that's
21 wrong. And there was a right way to do it, and he and they
22 should have done it the right way.

23 I want to talk a little bit now -- I'm going to step
24 back -- and I do think those are the three biggest evidentiary
25 themes that the defense in the trial -- I've tried to calibrate

1 them a little bit, and I think those are the three most
2 important, at least in terms of quantity, points that the
3 defense has made over the course of the trial.

4 I want to -- I'll go back to a couple of things that were
5 said in closing in a moment. But I want to talk a little bit
6 about the way Mr. Gasner characterized the way you should
7 approach the legal analysis.

8 And yesterday he said, look at Count Two first. And it's
9 sort of an umbrella count, is the way I think that he described
10 it. And he said, with this umbrella count, once you've worked
11 that one out you'll be able to figure out the Count One, Count
12 Three, and Count Five afterwards; all sort of rise and fall
13 together once you figure out Count Two.

14 That's not what the instructions say. The instructions,
15 first of all, say you must look at every count separately. You
16 heard that from the Court. And you'll see that the elements of
17 Counts One and Two, while the same in some ways, are different
18 in other ways.

19 And you need to respect those differences, and you need to
20 go back and do what the Judge has told you to do, and go
21 through the counts individually and look at the individual
22 elements for each one.

23 Now, the reason, I believe, that Mr. Gasner suggested to
24 you that you start with Count Two instead of Count One is
25 because of the disaster that Professor Lewis was. And this is

1 an effort to try to avoid too much conversation about getting
2 into the economic espionage charge right off -- right out of
3 the box.

4 But I would encourage you to follow the instruction.
5 Don't forget about the economic espionage charge. And begin
6 with Count One and work through the instructions individually,
7 like the Court's instructed you to do.

8 Now, Count One and Count Two are conspiracy charges. And
9 as the defense pointed out, the conspiracy charges allege a
10 conspiracy that begins in or about, which is a lawyer way of
11 saying around, you know, 1998, and continues until 2011.

12 And both Mr. Gasner and Mr. Froelich got up, and they said
13 you to, well, Mr. Maegerle wasn't doing anything in 1998. This
14 is outrageous that you've talked about Mr. Maegerle being
15 involved in this criminal agreement in 1998.

16 Well, they say that, and then the first thing they do,
17 Mr. Gasner did, was drop back into 1997, and talk to you a lot
18 about what happened in 1997.

19 And I'm going to talk to you a little about what was going
20 on in 1997. And I would encourage you to go back and think,
21 and this gets to be a while ago, about the testimony of
22 Mr. Marinak.

23 What Mr. Marinak said was, we were working on a bunch of
24 other stuff and one day Walter Liew says, I want to work on
25 this TiO2 process.

1 He has come by some patents in 1996. And you heard the
2 very last witness talked about some old binders that had some
3 1996 patents in them.

4 So Mr. Liew had been reading some patents. He goes to
5 Mr. Marinak and he said, we're going to China; let's go. And
6 they get on an airplane and they go to China together.
7 Mr. Marinak said it happened very quickly.

8 They get over to China and they have, all of a sudden,
9 this giant meeting with all the guys from the Chengde project.

10 And Mr. Marinak said Mr. Liew didn't know anything. He
11 couldn't answer any of the questions. It was like out of the
12 blue. And this is after the 1996 patent research.

13 Well, they come back, and there's some interest in this.
14 But Marinak says, well, I got him some historical patents. We
15 didn't know anything about this, so we went and found these
16 guys at Condux.

17 Again, let's be clear. Totally legitimate. You are
18 allowed to consult. Condux is not a criminal enterprise.
19 We're not suggesting that Condux is a criminal enterprise.
20 Condux is a group of former DuPont employees who do consulting,
21 apparently, in TiO2 and outside of TiO2. Totally fine.

22 And when you go back and look at those initial pieces of
23 correspondence, there's this guy Fred Arbogast. And he's
24 another person who we got the, well, why didn't the government
25 call him? Probably because we have his letters and it was in

1 1997, and why didn't we.

2 But what Mr. Arbogast says is two things. First of all,
3 they're looking for people to review a technology package that
4 is put together, a design that is put together by Mr. Liew and
5 Mr. Marinak. So they're not looking for designers at that
6 point in time. They're not looking for Mr. Maegerle to design
7 a TiO₂ plant. They're looking at Mr. Maegerle to review a TiO₂
8 design.

9 And for the purposes of what's kosher in terms of using
10 DuPont materials, that's a very important distinction.
11 Reviewing somebody else's design and designing it yourself are
12 different things. And it was the review somebody else's design
13 that was the first order of business.

14 But the words that Mr. Arbogast used in this connection
15 were really important. He said:

16 "As unbelievable as it sounds, they are going to use
17 public information, sources in order to design the TiO₂
18 plant."

19 "As unbelievable as it sounds." Something that an
20 engineer says is unbelievable is probably not reasonable. They
21 are opposites.

22 And so when Mr. Arbogast says it's unbelievable that
23 they're going to try to do this, and then you've got the
24 defense saying, oh, it's totally reasonable, Walter Liew got a
25 bunch of patents, got a couple of textbooks, he's going to

1 design a TiO2 plant, no. It's unbelievable that they are going
2 to do this. Not worthy of belief. Can't believe it.

3 And that's in 1997. They're moving along in 1997 and then
4 what happens? Mr. Marinak gets in a car. He drives to Reno
5 with Mr. and Mrs. Liew, and he meets Tim Spitler. Tim of the
6 flow sheets from Tim, Tim. Tim of the I got this print from
7 Tim. Tim of the stolen prints Tim. That Tim.

8 They go visit him at the end of 1997. And then, suddenly,
9 miraculously, as if the sun had risen, 1998, Mr. Liew suddenly
10 has a TiO2 contract with the Chengde company.

11 Where did that come from? How did he suddenly go from
12 knowing nothing in 1997 to Chengde contract in 1998? It was
13 flow sheet 10. That's when the conspiracy starts, ladies and
14 gentlemen.

15 I'll give you, it wasn't Mr. Maegerle who started the
16 conspiracy, but that's not what the indictment says. The
17 indictment says in or about 1998, and continuing until
18 October 2011, two or more people. The two more people are Tim
19 Spitler and Walter Liew.

20 The conspiracy instruction also says to you that people
21 may join a conspiracy in progress; and people who join a
22 conspiracy in progress are just as culpable as people who were
23 there from the beginning.

24 So Mr. Maegerle was around, but he didn't do anything. A
25 couple thousand dollars in '97, '98. And then nothing until

1 2004. So you've heard all the way back to openings, it's not a
2 decade like the green eye shade, figuring out how to ... no,
3 they didn't do diddly from '98 to 2004.

4 And then the Hong Jibi opportunity arises at the Pangang
5 Group. And after that Mr. Maegerle is back in. And after that
6 Mr. Maegerle is using his Basic Data Document.

7 The Basic Data Document. He said at the time the Jinzhou
8 specifications were scaled down from the Basic Data
9 information. Jinzhou was the first project. He, in his own
10 words, admitted he was using the Basic Data Document for
11 Jinzhou as early as 2004.

12 And I'll get to this, but I struggle with dignifying the
13 argument that Mr. Maegerle somehow thought it was totally cool
14 to use the Basic Data Document. That's absurd.

15 Mr. Froelich doesn't even admit that he had it. There's a
16 lot of wishy-washy about exactly whether he's got it; whether
17 there are notes in a travel bag; you know, did he take some
18 notes; where are the notes; did he find the notes; when did he
19 find the notes. He either had it or he didn't have it. We're
20 going to talk about that in a minute.

21 But your first conspirators are flow sheet 10 and
22 Mr. Liew. And when the conspiracy lights up again in 2004, you
23 see Mr. Maegerle working on the Jinzhou project and using the
24 Basic Data Document.

25 And by 2004-2005, Mr. Maegerle's work had fundamentally

1 changed from what Mr. Arbogast was selling in the late '90s
2 because it had gone from reviewing designs by Mr. Liew and
3 Mr. Marinak to being the designer on the project.

4 Mr. Gasner offered some opinions about what must have been
5 going on in Mr. Maegerle's head. He was looking at the
6 collection of drawings that Mr. Maegerle had done over the
7 years, and he said "RJM" is up in the top corner with a date;
8 well, he must have been proud of the work he had done, and
9 that's why -- how is that possibly criminal?

10 And, first of all, I'd like to say how Mr. Gasner knows
11 what's going on in Mr. Maegerle's head is an evidentiary
12 mystery, given what is in the record and is not in the record
13 here. He doesn't know.

14 There is no evidence of this. You don't know. That is
15 speculation, and it's not appropriate for you to consider in
16 your deliberations.

17 What we do know is that Peter Zisko said that Mr. Maegerle
18 was bitter about what had happened to him at DuPont. And he
19 had given some examples about the engineering department being
20 closed at DuPont, which may have accelerated his being laid
21 off, which is obviously a perfectly appropriate reason to be
22 angry.

23 But that was Mr. Zisko's recollection of conversations,
24 and the Korea project and how Mr. Maegerle was mad that the
25 Korea project had fallen apart.

1 But we also have Mr. Maegerle being told by his -- his
2 friend, Mr. Bizone, or his former colleague Mr. Bizone, that
3 there was an ethical issue with working on this project because
4 of his experience in the titanium dioxide industry.

5 So what's in Mr. Maegerle's head? Maybe this is a little
6 problematic. He also wrote to Mr. Sheehand.

7 Could you put up Exhibit 63, please.

8 And he said to Mr. Sheehand -- and this is interesting for
9 a couple of reasons. One, he said, I've drawn an oxidation
10 reactor from memory.

11 If you look down at the last instruction, the last part of
12 this instruction you're really not supposed to do that. You
13 know, this is not -- he's not a chemical engineer, ladies and
14 gentlemen. He's a mechanical engineer.

15 You can't memorize stuff and just suddenly say, totally
16 fine, I can just take it, walk out the door, and knock it out.

17 He also says here:

18 "I would like to have your comments if you feel so
19 inclined. And if you would rather not, just throw it away
20 and I will understand."

21 That reflects a comprehension that he'll understand if you
22 just throw it away because this is out -- this is out beyond
23 what we are supposed to be doing. That's the natural
24 interpretation of Mr. Maegerle's words here. And Mr. Gasner's
25 speculation as to what is going on in his head is just that,

1 speculation.

2 Mr. Maegerle is also engaged in attempting to find
3 information about Kuan Yin for Walter. And -- for Walter Liew.

4 And you'll remember that he sends an email to a fellow by
5 the name of Sherman Chen, that I think that you should spend
6 some time looking at, and that's Exhibit 878, in which he is
7 trying to bring in information about Kuan Yin, and trying to
8 find people who are going to work at Kuan Yin at USAPTI or work
9 on Kuan Yin information.

10 I want to kind of wrap up on the conspiracy charges this
11 issue, which is really the issue in the case about whether
12 Mr. Liew and Mr. Maegerle reasonably believed that what they
13 were doing was -- that they were dealing with DuPont trade
14 secrets by, again, asking you to look both at their -- their
15 words and common sense, and the natural reaction or the natural
16 consequence of a situation in which all of this is not a
17 secret, which all of this information is public, which is what
18 they're saying they reasonably believed at the time.

19 If all of this information, ladies and gentlemen, was
20 public, there would be a titanium dioxide factory on every
21 street corner in China. If all of this information was public,
22 Chinese engineers, who are perfectly good engineers, would be
23 able to design a titanium dioxide factory.

24 One of the most stunning pieces of evidence in this case
25 is this textbook by Liu Changhe, one of the managers at the

1 Jinzhou project. The guy is an expert in titanium dioxide. He
2 apparently can write. He apparently can read. He apparently
3 can read English because he was communicating with Mr. Liew
4 about Mr. Liew's letter.

5 What is preventing Liu Changhe from looking at all -- an
6 expert, a chemical engineer, looking at all of the available
7 public information, such as it is, and buildings his own
8 titanium dioxide factory in China?

9 Nothing is preventing him from doing that. But what he
10 doesn't have is the DuPont information that Mr. Liew, Walter
11 Liew, was marketing. And that, ladies and gentlemen, is simply
12 a matter of common sense.

13 I'd like to speak for a moment about the attempt charges.
14 Mr. Gasner talked a little bit about the two -- and
15 Mr. Froelich, about the -- about the attempt charges. And I
16 have a couple of items with regard to that, that I want to
17 cover.

18 This, in many ways, when you look at Trade Secret 1, is
19 sort of the classic attempt case. The language which
20 Mr. Gasner focused on of Trade Secret 1 and suggested was
21 impossibly too vague to understand or get your minds around,
22 ironically it's Mr. Liew's own language. It's the DuPont
23 chloride route process. It's what he said that he was
24 attempting to transfer to the Chinese state-owned companies.

25 You remember a slide that Mr. -- Mr. Gasner put up under

1 the attempt. It said "the generally known" and then put
2 "DuPont process."

3 Well, the term "generally known" is not from any document.
4 That's Mr. Gasner's term. And that's not what is alleged in
5 the indictment. It's the DuPont process, is that which is
6 alleged in the indictment.

7 And those are Walter Liew's own words about what he was
8 attempting to do. And he was moving along in this process in
9 April of 2011, when he got sued, and in July of 2011, when the
10 FBI conducted its searches at USAPTI, and it was those
11 intervening events that got in the way of his completing his
12 effort to transfer the DuPont information to the Pangang Group.

13 This is not an impossible concept to get your mind around.
14 But it's not our minds that are important. It's Walter Liew's
15 mind and Bob Maegerle's mind that's important. And these words
16 having been used by Mr. Liew are what matters, and it reflects
17 what his intent was at the time.

18 Mr. Liew, Mr. Gasner, and Mr. Froelich -- or Mr. Gasner,
19 I'm sorry, talked a little bit about the economic espionage
20 charges. And I'd like to just address those fairly briefly.

21 There are several ways that are alternative ways in which
22 the government can prove economic espionage. Mr. Gasner
23 suggested that the only way that we can prove the benefit prong
24 of economic espionage is to prove that the government equals
25 the Communist Party.

1 Well, that's not what the instructions say and that's not
2 what the evidence is in this case. The evidence is that the
3 State Council is the highest executive agency in the Chinese
4 government.

5 Mr. Liew said, himself, I got into this at the request of
6 the State Council. That's probably enough and should be enough
7 for all of you.

8 But the evidence goes on. And the United States is also
9 able to prove this element by showing that a -- a foreign
10 instrumentality is the beneficiary.

11 Here, the foreign instrumentality is the Pangang Group, as
12 to which it is undisputed is a Central state-owned, 100 percent
13 SASAC-owned company. That's ownership. Again, enough.

14 And when Mr. Liew was seeking these contracts, he wrote
15 directly to the chairman of the Central state-owned entities.

16 And one of those people, Hong Jibi, the chairman of this
17 large company, called Mr. Hu. It wasn't a secretary, if you go
18 back and look at your notes. It was Mr. Hong. The secretary
19 called to set up the call. Mr. Hu got on the phone with
20 Mr. Hong himself, of the Panzhihua Iron and Steel Group Company
21 Limited. And that is ownership.

22 It's also control, which is a third way of dealing with
23 this element. And it shows this control.

24 There was also a note a few years later on, in Mr. Liew's
25 own handwriting, where he's talking about a meeting that he had

1 with Fan Zhengwei, the chairman of the Pangang Group in 2008,
2 that Mr. Fan had been directed by Mr. SASAC to have with
3 Mr. Liew, and SASAC had been directed by a senior minister to
4 have.

5 The response to this letter has been described -- the
6 defense argument is that it's something called puffery. And
7 they rely on this puffery argument on the testimony of
8 Mr. Lewis.

9 I think that it is hard to capture in words how
10 fundamentally offensive Mr. Lewis's opinion is. Mr. Lewis's
11 opinion is that East Asians, when in East Asia, exaggerate in
12 order to get things. That's what he said.

13 Now, he said he can't really say what they do in the
14 United States because he's only been back for four years;
15 doesn't really know.

16 That is -- that is a very problematic conclusion by
17 somebody who is not -- has no way of knowing what Walter Liew
18 intended or didn't intend.

19 And I would submit to you that Walter Liew's genetic
20 makeup doesn't make him a liar or a truth teller. Walter
21 Liew's greed has made him lie. But that's a different thing.
22 It doesn't have anything to do with the fact that he is a -- a
23 Malaysia-born Chinese man.

24 **THE COURT:** Mr. Hemann, given the time, I would like
25 you to start wrapping up.

1 **MR. HEMANN:** I will, Your Honor.

2 **THE COURT:** I would like to instruct the jury with
3 more instructions.

4 **MR. HEMANN:** I will, Your Honor.

5 **THE COURT:** Thank you.

6 **MR. HEMANN:** A couple of things on the -- on the
7 individual trade secrets. First of all, I'd like to sort of
8 cut through the distractions on the actual trade secret
9 charges. Number one, here's -- here's a theory, the
10 government's theory that covers every single one of the four
11 alleged trade secrets.

12 Number one, the defendants possessed these compilations,
13 these compilations which are unique compilations about how to
14 manufacture titanium dioxide. And that is exactly what the law
15 says.

16 These were in the defendants' possessions. A compilation
17 is a trade secret. The compilations belonged to DuPont. They
18 have "DuPont" stamped on them. They are all marked
19 confidential.

20 The compilations, none of these compilations were
21 available to the public. Mr. Cooper said that none of the
22 compilations were available to the public.

23 The compilations had value to somebody who is trying to
24 replicate the DuPont process. Both Mr. Maegerle and Mr. Liew
25 treated these as if they had value. And these were used by the

1 defendants in connection with their contracts with the Chinese
2 state-owned entities.

3 That is more than reasonable doubt. None of those things
4 that I just said to you are disputed by any evidence in this
5 case. That's what this case is about. It's about -- that's
6 what it's been about since the very first day. And nothing
7 that Mr. Cooper said or didn't say or changed his mind about
8 saying over the two days that he testified disturbs that in the
9 least.

10 And I'd like to just say the following about Mr. Cooper.
11 I would say that Mr. Gasner and I certainly agree on one thing.

12 You should take this credibility of witnesses instruction
13 and you should go back and you should apply it to Mr. Cooper.
14 And you should reach the conclusion, having applied it to
15 Mr. Cooper, that he is not worthy of your belief.

16 I would point out to you that Mr. Axelrod pointed out 11
17 things about Mr. Cooper that should have you questioning his
18 creditability.

19 In their arguments, the defense only dealt with the
20 \$200,000 point by saying he did a lot of work. None of the
21 other points were dealt with in the defense cross.

22 Mr. Cooper was revealed as the worst kind of hired gun
23 when he came in and testified to you. His opinions were long,
24 long, long on broad generalities, but very, very, very short on
25 actual specifics. And those actual specifics had a lot to do

1 with ranges, and almost nothing to do, in fact, nothing to do
2 with the actual numbers found in the Basic Data Document.

3 With regard to the accession memo, the memo that the
4 Diemer correlation is in, I would like to point out to you that
5 this is a useful -- a useful item to look at in connection with
6 the attempt charges. And I'll tell you why. What Mr. Cooper
7 said was that this is useful in -- that this relates to sizing
8 the adjustable slot in the oxidation reactor.

9 Jinzhou has an adjustable slot. And what the testimony
10 was, was, well, wait a minute, like, once the factory is built,
11 we have to figure out how big or small to make the slot so we
12 can figure out how big or small to make the particles that we
13 want.

14 Jinzhou was just wrapping up in the spring of 2011. The
15 plans were done. The factory was being built. Guess what it's
16 time to do? Figure out how big to make the observation reactor
17 slot, which is exactly what this document has to do with.

18 And, lo and behold, it's sitting on Walter Liew's desk.
19 Mr. Liew describes it to Jian Liu to as an important document.
20 And he tasks Thongchai Thongthawee with trying to figure out
21 how to make it work.

22 It wasn't ideal. It's Fortran code. I guess it is old
23 and people don't use it much. But it's what he had. And the
24 testimony was you can use it, you just have to figure out.

25 Thongchai Thongthawee was not the guy to figure it out,

1 probably, but he was trying to figure it out. And what got in
2 the way of it? What got in the way of it was DuPont and the
3 FBI investigation that happened at the same time.

4 And I'll say this with regard to this document and
5 Jian Liu. The argument was made that Jian Liu to didn't think
6 that anything was wrong, that Mr. Liew hadn't done anything
7 wrong, that there was any problem at all.

8 But what did Jian Liu to do after Jim Jubb showed up at
9 his house? He threw this away. And why did he do it? Because
10 he said, I didn't want any DuPont stuff in my house.

11 And he lied about Mr. Maegerle and Mr. Spitler. And why?
12 He did it to honor his promise to Mr. and Mrs. Liew. But he
13 knew that it was wrong.

14 There's been a lot of testimony in the case about the
15 vendors and the role of the vendors in -- we've seen emails, a
16 lot of emails back and forth between employees and vendors.
17 And there's been a lot of testimony about, sort of, what's off
18 the shelf and what vendors do and things like that.

19 I'm going to commend to you this exhibit, Exhibit 189, and
20 ask you to look at the very, very back of it. It's an
21 equipment list. And you'll see in this equipment list that
22 there are lists of suppliers. And you're going to see all of
23 these lists of suppliers.

24 You're going to see in these lists of suppliers names that
25 you have heard about over and over and over again: Petrochem;

1 Lawrence Pump; Hazelton; FLSmith. You're going to see them
2 listed as the suppliers of certain pieces of equipment.

3 You will also see something described as USAPTII Custom
4 Fabrication. And those are for the pieces of equipment that
5 you will have heard throughout the trial are the important
6 pieces of equipment, the things that are not off the shelf:
7 The oxidation reactor; the chlorinator; the aluminum chloride
8 generator; those items, the not-off-the-shelf stuff. Those are
9 USAPTII Custom Fabrication.

10 So then think back about all of this testimony about the
11 stuff that Claudius Peters and the other vendors are providing.
12 It's the off-the-shelf stuff. Totally fine. Everybody says
13 you buy off-the-shelf stuff.

14 But there's stuff about this process that is hard.
15 There's stuff about this process that is not publicly
16 available.

17 And, ladies and gentlemen, ask yourselves when you go back
18 in the jury room what USAPTII Custom Fabrication means. And
19 think about Brijesh Bhatnagar, who sat up there. And he
20 testified, well, I'm a mechanical engineer, and we got
21 everything from Mr. Maegerle.

22 And then he made this distinction that's very useful
23 between criteria, equipment criteria, the thought, and then
24 specs. He was like, yeah, we would get the criteria from
25 Mr. Maegerle and then we would do what engineers do, we'd draw

1 it out. But he didn't know the criteria.

2 Mr. Anroc said the same thing. All the witnesses said the
3 criteria, hard stuff, is coming, and it's coming from one
4 person. And it's coming from Mr. Maegerle. And that's what
5 USAPTI Custom Fabrication means in this case.

6 And now take that evidence and apply your common sense to
7 it. Is it really the case that with nothing other than his
8 engineering background Mr. Maegerle's capable of designing a
9 100,000-ton operating -- well operating TiO2 plant for the
10 Pangang Group? If that was the case, I seriously doubt that
11 Mr. Liew would have been paid \$28 million.

12 On the point of the \$28 million, you've also heard a lot
13 of evidence about all of the work that was done. And I submit
14 to you, ladies and gentlemen, that the work that was done falls
15 into this category of Mr. Bhatnagar working out the specs,
16 Mr. Ilagan doing these CAD drawings, which take up a lot of
17 bites and bits and pile up the paper to the satellite pretty
18 quickly.

19 There's a lot of work being done. Mr. Liew and
20 Mr. Maegerle were not indicted for being lazy. They worked.
21 They worked. And we know precisely how much they worked.

22 Can you switch to the -- I'll give you a number.
23 \$4.821 million. That's how much work was done in this case.
24 That's a lot of work. It's a ton of work. You can generate a
25 lot of paper for \$4.821 million.

1 And we know that because when you go back and you look at
2 of the tax returns and all of those QuickBook entries that
3 Mr. Guan testified about, if you wish to do this, you can add
4 up all of the contractor payments, all of the employee -- and
5 those are the two big issues, the two big items are payments to
6 contractors and subcontractors, and payments to employees. And
7 then there's a little bit of rent that goes on top of it.
8 That's where all the work is.

9 And where is all -- and there's almost \$18 million that is
10 nothing but profit. And it's being shot over, and all the
11 work, all the work product, all the computers, it's in your
12 \$4.8 million which, again, is not an insignificant amount of
13 money, but it's not \$17.7 million.

14 While this slide is up I want to talk briefly about the
15 willfulness. And I want to say to you that the willfulness in
16 this case comes directly from this set of data.

17 It had to have been remarkably hard over a five-year
18 period of time to balance your reported gross receipts with
19 your total deductions within to \$42,000 out of \$22.5 million.
20 That is probably the quintessential example of willfulness.

21 Just about five minutes, Your Honor, if that's okay.

22 **THE COURT:** Thank you.

23 **MR. HEMANN:** With regard to the patents and textbooks
24 before -- and, again, ladies and gentlemen, I know there's a
25 lot going on. I know that you're tired. I'm trying to hit the

1 things that have been the bigger themes in the case, and hit
2 them as quickly as I can.

3 I do want to spend a couple of minutes talking about the
4 patents and the -- and the textbooks.

5 I think the easiest way to dispose of the entire
6 conversation about patents came out of the mouth of Mr. Cooper.
7 When asked by Mr. Axelrod about the patents, Mr. Cooper said, I
8 don't design with patents.

9 Of course not. Of course he doesn't design with patents.
10 That's consistent -- it's a defense witness, which is why I
11 think that alone should be the end of the story. But that's
12 what all the other witnesses said.

13 Mr. Marinak said background information, can't really get
14 it to work. If you want it to work, you don't use patents.
15 Mr. Dayton said that. Again, it's not a remarkable
16 proposition, but it's a very clear proposition.

17 The evidence you have in regard to patents is that
18 Mr. Liew collected a few in '96 and '97, and a bunch more in
19 2011, after the civil suits.

20 But you don't hear any evidence about anybody between
21 those two periods of time reading patents, looking at patents,
22 designing patents. That's all there is about patents.

23 There was some question by Mr. Gasner about why the FBI
24 didn't pick them up in the search. Well, it's really for good
25 reason. They're patents. They're not design documents. And

1 they're publicly available. Lots of things. It doesn't sound
2 like it.

3 Sounds like, from Mr. Gasner's closing, it sounds like
4 after the FBI left the USAPTI office it was like after the
5 Grinch left, there was just a couple of Christmas bulbs and
6 these five binders. They didn't take everything. But they
7 didn't take these binders because they're patents and who
8 cares.

9 Same, perhaps even more so, about the textbooks. When
10 asked about Barksdale, Mr. Cooper said I don't use Barksdale.

11 When asked about Liu Changhe's textbook, he said
12 Mr. Gasner gave him a translation of it, and it's a kind of
13 textbook that he would look at.

14 Again, the textbooks are good helpful background. But
15 they don't show you how to build a titanium dioxide plant, or
16 the Chinese state-owned companies would not have paid all this
17 money to have somebody build them a titanium dioxide plant.

18 The information is not in textbooks. The textbooks and
19 patents, despite the enormous amounts of time that we've spent
20 thinking about them, talking about them here, don't help you
21 design a titanium dioxide plant.

22 I want to hit a couple of things that Mr. Froelich talked
23 about. He mentioned, at one point in time, that with regard to
24 these consultants like Mr. Liew, you all the sudden have a
25 situation in which consultants are doing all of the work. And

1 he cited a letter -- if you could put up 843, page 7, please.

2 And you'll recall, if you blow up all of the text, that
3 Mr. Guevara put up all of the text and Mr. Froelich said, no,
4 no, just the first paragraph. And that's because the second
5 two paragraphs say this is bad; we've got to do something about
6 it; we've got to tighten up our procedures.

7 And if you look at the evidence in the case, you'll see
8 that Mr. Maegerle became one of the chief tighteners in the
9 aftermath of this very letter. To tighten up the procedures to
10 make sure that information wasn't getting out through the
11 contractors.

12 **THE COURT:** All right. Please --

13 **MR. HEMANN:** Thank you, Your Honor. I'm going wrap up
14 right now.

15 Ladies and gentlemen, there's a lot to say, obviously, but
16 at the end of the day this does come down to the things we
17 learned about the world when we were very young, which is that
18 it's not okay to steal somebody else's stuff.

19 There's no dispute, no rational dispute in this case that
20 these documents were in the possession of the defendants and
21 the defendants were using these documents.

22 The distractions that the defendants have offered as
23 defenses are just that, distractions, because they don't
24 comport with common sense.

25 And the reason that we in the United States have juries,

1 the reason that we have asked you and are very grateful for the
2 fact that you have come in day after day, week after week, is
3 because we lawyers need you to add and inject a little bit of
4 common sense, sometimes, into what we do for a living.

5 The Court, during jury selection, said that your voice,
6 your jury service reflects the conscience of the community.

7 And it is the position of the United States that your
8 verdict today should reflect that conscience today, the next
9 couple of days. Your verdict in this case should reflect that
10 conscience and the reality that the sort of stealing and
11 cheating and lying that went on in this case is not acceptable;
12 that companies, whether big or small, in the United States have
13 the right to have their own intellectual property; have the
14 right to invent, and the right to innovate. And that's true
15 whether they are large companies like DuPont or small companies
16 in Silicon Valley.

17 Taxpayers have the right not to have somebody skip out on
18 \$6 million in taxes. The court system has the right not to
19 have people lie in connection with court proceedings.

20 We need all of these things. We need them in order to
21 preserve our civil institutions. And that is why we have
22 juries.

23 And that is why Mr. Axelrod, Mr. Scott, Special Agent Ho,
24 and I are asking you to return verdicts of guilty against the
25 defendants in each one of the counts in the indictment.

1 **THE COURT:** Thank you, Mr. Hemann.

2 I'm going to give the remaining instructions so if any
3 spectator wants to leave they should do so now because I'm
4 going to lock the door.

5 So if you'll turn to page 48 of your instructions I'm
6 going to give you your remaining instructions, and then we will
7 finish up for the day.

8 Everyone on page 48 and reading along?

9 Okay. When you begin your deliberations, elect one member
10 of the jury as your foreperson, who will preside over the
11 deliberations and speak for you here in court.

12 You will then discuss the case with your fellow jurors, to
13 reach agreement if you can do so. Your verdict, whether guilty
14 or not guilty, must be unanimous.

15 Each of you must decide the case for yourself, but you
16 should do so only after you have considered all the evidence,
17 discussed it fully with the other jurors, and listened to the
18 views of your fellow jurors.

19 Do not be afraid to change your opinion if the discussion
20 persuades you that you should. But do not come to a decision
21 simply because other jurors think it is right. It is important
22 that you attempt to reach a unanimous verdict but, of course,
23 only if each of you can do so after having made your own
24 conscientious decision. Do not change an honest belief about
25 the weight and effect of the evidence simply to reach a

1 verdict.

2 Because you must base your verdict only on the evidence
3 received in the case and on these instructions, I remind you
4 that you must not be exposed to any other information about the
5 case or to the issues it involves.

6 Except for discussing the case with your fellow jurors
7 during your deliberations, do not communicate with anyone in
8 way, and do not let anyone else communicate with you in any way
9 about the merits of the case or anything to do with it.

10 This includes discussing the case in person, in writing,
11 by phone, Smartphone, or electronic means, via email, text
12 messaging or in or on any Internet chat room, blog, website,
13 including such social networking media like Facebook, Myspace,
14 LinkedIn, YouTube, and Twitter, or other feature. This applies
15 to communicating with your fellow -- I'm sorry with your family
16 members, your employer, the media or press, and the people
17 involved in the trial.

18 If you are asked or approached in any way about your jury
19 service or anything about this case, you must respond that you
20 have been ordered not to discuss the matter, and to report the
21 contact to the Court.

22 Do not read, watch, or listen to any news or media
23 accounts or commentary about the case or anything to do with
24 it.

25 Do not do any research such as consulting dictionaries,

1 searching the Internet, or using other reference materials.

2 And do not make any investigation or in any other way try to
3 learn about the case on your own.

4 The law requires these restrictions to ensure the parties
5 have a fair trial based on the same evidence that each party
6 has had an opportunity to address. A juror who violates these
7 restrictions jeopardizes the fairness of these proceedings and
8 a mistrial could result that would require the entire trial
9 process to start over. If any juror is exposed to any outside
10 information, please notify the Court immediately.

11 Some of you have taken notes during the trial. Whether or
12 not you took notes you should rely on your own memory of what
13 was said. Notes are only to assist your memory. You should
14 not be overly influenced by your notes or those of your fellow
15 jurors.

16 The punishment provided by law for these crimes is for the
17 court to decide. You may not consider punishment in deciding
18 whether the government has proved its case against any of the
19 defendants beyond a reasonable doubt.

20 A verdict form has been prepared for you. After you have
21 reached unanimous agreement on your verdict, your foreperson
22 should complete the verdict form according to your
23 deliberations, sign and date it, and advise my courtroom
24 deputy, Ms. Ottolini, that you are ready to return to the
25 courtroom.

1 If it becomes necessary during your deliberations to
2 communicate with me, you may send a note through my courtroom
3 deputy, Ms. Ottolini, signed by any one or more of you. No
4 member of the jury should ever attempt to communicate with me
5 except by a signed writing, and I will respond to the jury
6 concerning the case only in writing or here in open court.

7 If you send out a question, I will consult with the
8 lawyers before answering it, which may take some time. You may
9 continue your deliberations while waiting for the answer to any
10 question.

11 Remember that you are not to tell anyone, including me,
12 how the jury stands numerically or otherwise on any question
13 submitted to you, including the question of the guilt of a
14 defendant, until after you have reached a unanimous verdict or
15 have been discharged.

16 So that is the final-final instruction.

17 I'm now going to tell you who the alternates are, and I
18 will give some special instructions and words for the
19 alternates.

20 And you can open the door. That's fine.

21 The names of the alternates, Alternate 1 is Joanne Miller;
22 Alternate 2 is Wesley McBride; Alternate 3 is Anthony
23 Christopher; and Alternate 4 is Catherine Lindberg.

24 Now, the first thing I want to do on behalf of the Court
25 and all the parties is to thank the alternates for their

1 service, which is not over. And it's very important to know.

2 But you are there, and those of you who follow basketball,
3 the fifth man or woman or the bench are extremely important.
4 Sometimes they do -- they're more important or as important as
5 the starting five, if you will, or the starting 11, or whatever
6 the sport is. So you played an incredibly important role as
7 insurance should any juror not be able to attend the trial or
8 have to be excused for some other reason. So it's a very
9 important role.

10 And your role is not done for the following reason: The
11 deliberations will start tomorrow morning and will continue
12 until the jury has reached a verdict. If there is some reason
13 that a juror needs to be excused during the deliberations or
14 the Court must excuse a particular juror, then, one, depending
15 on how many that would be, one or more of the alternates would
16 have to take their place. And the law says that at that point
17 the deliberations would have to start all over again, just the
18 deliberations.

19 So, therefore, those four alternates need to be kept
20 pristine, if you will, in the sense that you may not -- all of
21 the instructions I gave you throughout the trial, that you can
22 probably recite by heart, still apply to you until such time as
23 the Court, through Ms. Ottolini, will call you and tell you
24 that your service is completed because the jury has reached a
25 verdict. And you are then free to do what any citizen can do,

1 and discuss the case as you see fit.

2 It's extremely important, as part of those instructions,
3 as much as you all have obviously bonded together in these
4 many, many weeks, that you may not discuss the matter at all
5 with the remaining jurors.

6 So the remaining jurors cannot discuss the matter with the
7 alternates, and the alternates cannot discuss the remaining
8 matters with the other jurors. And the alternate jurors should
9 follow the same instruction as they have throughout the trial
10 and as applies now to the deliberating jury.

11 But I do want to thank you again. It's been extremely
12 gratifying for the Court and the lawyers and the parties to
13 have you here because it gave us the assurance that we were
14 going to be able to get through this trial without any mishaps.

15 So thank you. We don't have any sort of parting ceremony
16 or closing ceremony or, you know, Olympic greens or anything.

17 I would suggest, please, in order to keep the process
18 appropriate, that you leave all your pads and everything here,
19 go to the jury room, and obtain your belongings and then leave,
20 with the Court's thank you. Yes. I hate to be so abrupt, but
21 that's what I'm required to do.

22 **THE CLERK:** The rest of the jury stays.

23 **THE COURT:** The rest of the jury stays here.

24 **THE CLERK:** Just the four that are leaving.

25 (Alternate jurors exit the courtroom.)

1 **THE COURT:** All right. So we now have the remaining
2 12. So let me just tell you a little bit about we have a
3 couple more minutes left. Always on schedule here, happy to
4 say, to the last day and last minute that you kindly allotted
5 us of your time.

6 So tomorrow, again, there's no opening ceremony or
7 comments by the Court, or introduction. You now need to go to
8 work. So you come in here, and preferably by 8:00. We're
9 going to keep the normal schedule on Thursday and not have you
10 deliberate on Friday.

11 But as soon as you are all in the room with the door
12 closed, you may start deliberating. There's no magic bell
13 that's going to go off at 8:00. But you must all be in the
14 room at all times when you deliberate. In other words, be in
15 the room with the door closed.

16 There will be probably a marshal, which is what we
17 typically do, or somebody watching the door. But you should
18 all be deliberating only when all of you are present in the
19 jury room with the door closed, because your deliberations are
20 your deliberations, and they are private, not to be disclosed
21 to anybody.

22 So you can start whenever you get here all together.
23 Whether it's before 8:00 or 8:00, just wait for everybody to be
24 there. Then the deliberations are in your hands.

25 As I mentioned, if you want to work a normal court day of

1 8:00 to 1:30, it's up to you to do that. I would appreciate if
2 you would at least work that period of time. If you wanted to
3 stay later, within reason, the room is yours. You have the
4 case now and you're in charge. You are the judges of the
5 facts. And you're doing your duty now, finishing your duty.
6 So you can work later.

7 The only thing we ask you is that if you decide to work
8 later or outside the normal hours tomorrow, just let
9 Ms. Ottolini know because the parties and the Court have to be
10 on call in case we need to hear from you.

11 The other -- the only other thing I want to tell you is
12 when you arrive tomorrow, the special verdict form I mentioned
13 will be there.

14 And, also, the parties, the lawyers have agreed upon a
15 table of contents of the exhibits so that it's not like finding
16 a needle in the proverbial haystack. You'll actually have a
17 table of contents, like with the jury instructions, that will
18 enable you to find exhibits that you wish to find.

19 So there it is. The case is in your hands. We will not
20 see you again until there's some reason that you initiate.

21 At the end of the day, by the way, again, we don't have
22 any closing ceremonies or we don't have to say a blessing or
23 anything like that. You just can leave just like you do. But
24 you don't come to court.

25 Just remember the Court's instruction. But I don't think

1 it's necessary to actually meet with you before you leave and
2 just say good-bye because that's basically all I would be doing
3 since I am not permitted to communicate with you in any way
4 except officially, and there would be no reason to do that.

5 So those are your instructions. You have the jury
6 instructions. Yes.

7 **JUROR DUPONT:** Are we allowed to leave the room for
8 breaks?

9 **THE CLERK:** I'll explain to them.

10 **THE COURT:** That's totally up to you. You can leave
11 for breaks. You make your own breaks. The case is in your
12 hands, and I don't tell you how to run your deliberations.
13 That's up to you, and you'll decide that, and that will be your
14 job.

15 All right. Thank you very much. You're excused until
16 further --

17 **THE CLERK:** Bring your notepads and all of your
18 instructions because you're going to put them in the jury room
19 before you leave.

20 (Jury out at 2:11 p.m.)

21 **THE COURT:** So the jury is gone. Thanks for staying
22 on time, just barely. But we made it.

23 And Ms. Ottolini, if she hasn't already done so, will talk
24 to you about availability because we don't want any of us, the
25 Court or any of you to be the weak link or the missing link or

1 especially if the jury has a question or has a verdict.

2 So we don't want there to be too long a delay. You don't
3 have to hang around the courthouse, but you should be within a
4 reasonable period of time away. And give your cell phone
5 information so at least one person from the team or for each
6 party will be available to talk to their colleagues.

7 All right. Other than that, thank you very much. And
8 we'll see what happens. And we'll await the result of the
9 jury. Thanks.

10 (Counsel simultaneously thank the Court.)

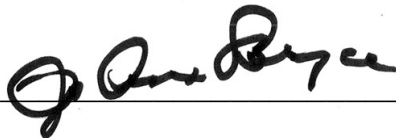
11 (Proceedings adjourned at 2:12 p.m.)

12 ---oOo---

13 **CERTIFICATE OF REPORTERS**

14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled matter.

16 DATE: Tuesday, February 25, 2014

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18
19 

20 Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
21 U.S. Court Reporter

22
23 

24 Katherine Powell Sullivan, CSR No. 5812, RMR, CRR
25 U.S. Court Reporter